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★★★★★★★★★★★★★

CASE NUMBER_____

IN THE

United States Supreme Court

TERM FOR:_____

★★★★★★★★★★★★★

IN RE: SAMUEL L. LIEBER, M.D.

★★★★★★★★★★★★★

ON PETITION FOR PLENARY WRITS OF PROHIBITION, MANDAMUS, AND ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA RE: DENIAL OF PETITION FOR WRITS OF PROHIBITION, MANDAMUS, ERROR CASE NUMBER: 82-C-0024 (ORIGINAL CASE NUMBER: 80-C-2514)

★★★★★★★★★★★★★

APPLICATION FOR EXTRAORDINARY WRITS OF PROHIBITION, MANDAMUS, OR BOTH IN THE ALTERNATIVE

★★★★★★★★★★★★★

Counsel of Record:

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RE SAMUEL L. LIEBER, M.D.
PETITION FOR EXTRAORDINARY WRITS

TO THE

Supreme Court, United States of America

TERM: FOR APRIL, 1982
CASE NUMBER:

RE: DENIAL OF DUE PROCESS
DENIAL OF RIGHTS OF PROPERTY USE
INFLICTION OF CRUEL AND
UNUSUAL PUNISHMENT
DENIAL OF EQUAL PROTECTION OF THE LAW
DENIAL OF APPLICATION FOR WRITS OF
PROHIBITIONS, MANDAMUS AND ERROR,
LOUISIANA SUPREME COURT

CASE NUMBER 82-C-0024 (Ref: 80-C-2514)

APPLICANT'S APPLICATION
FILED IN PROPER PERSONA

Attorneys of Record for Petitioner:
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"Do you not understand now that what the nation is dying of is the obscurity in which there is such an obstinate determination to leave it? The blunders of those in authority are being heaped upon those of others; one lie necessitates another, so that the mass is becoming formidable. A judicial blunder was committed, and then to hide it a fresh crime against good sense and equity has had daily to be committed!"
(Emile Zola — Trial for Libel)

OPENING REMARKS

(Please refer to Statement of The Case, Page 4 .)

HONORABLE JUSTICES OF THE UNITED STATES SUPREME COURT:

To catch your eye, there is given a space equal to perhaps one-third of my final appeal to my State Supreme Court!

I beg you, then, to *study at least these few pages!* If you do, I am not convinced that you will accept further perusal of my problems, but do know that such data shall imprint adequately upon your minds so as to affect positively your future actions in other cases!

I have been "denied" by my legal system thus far — so shall be denied in this quest, also, probably. Yet, *not* to have attempted would have ladened me with a burden almost too great to bear — a questioning of the capability of MY COUNTRY'S system of JUSTICE — a questioning of its ability to maintain quality of judging in face of inordinate quantity of work thrust upon each member of our judiciary!

So, I add another bit of toil to your backs, yet, for which I cannot apologize — only regret its necessity!

QUESTIONS PRESENTED FOR REVIEW:

1. Relate to city government authority developing *group* placement of piers, *off* perpendicular from water supply reservoir contour line — first, without notice to each affected property owner — second, at variance with specifications of local ordinance that maintains exclusive riparian rights of abutting property owners, as well as mandatory perpendicular con-

struction of piers into said reservoir from said contour line.

This is deprivation of use of property rights without due process of law, (Bill of Rights Art. V, XIV) — as well as denial of equal protection of law (Bill of Rights, Art. XIV)!

2. Relate to refusal of District Court, Appeal Court, and Supreme Court Judges — their refusal to define and uphold laws of the State of Louisiana and of the United States of America!

Not only is there to be found denial of use of property rights herein (Bill of Rights, Art. V, XIV), but denial of equal protection of law (Bill of Rights, Art. XIV), as well as — in this bizarre case — infliction of cruel and unusual punishment! (Bill of Rights, Art. VIII)

My complaints relate to what I believe to be denial of rights given to me in our Bill of Rights, as noted in:

Article V — No deprivation of property (rights) without due process of law.

Article VIII — Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted.

Article XIV — No deprivation of property (rights) without due process of law.

Article XIV — No denial of equal protection of law.

One thing — assuming me correct — is that I have been denied certain rights — minor though they are, in fact! — i.e., the end results!

Another thing, however, and of cataclysmic import, is the denial of due process in the means to the end (result)!

For one to be fortunate enough to be able to search for truth(?) — to be able to study philosophy, ethics, logic — and to be able to try to apply (what seemed to be commonly agreed to) truths to this particular problem — yet, then to be denied any answer to rebuttal at each court level and yet to receive — not just denial — but to receive denial *without evidence of reasoning* — of no argument against his own questions of LAW THAT IS PHILOSOPHY — ETHICS — LOGIC — becomes too great a burden for a CITIZEN to be forced to bear! — and is, most certainly, infliction of cruel and unusual punishment — onto first THE CITIZEN — but of greater magnitude — onto next — ALL CITIZENS — through the slow and surreptitious erosion of those rights won by those who gave us OUR WONDERFUL LAND!

Mental agitation (emotion) of enormous degree develops under such circumstances and must be most carefully handled by its victim so as not to cause harm to either its possessor or to his environment! What should be obvious to you who judge is that it is as normal to hate as to love — that one loves the good and hates that bad that happens to oneself — that one loves that perpetrator of good and hates that perpetrator of evil — and that, although good should be the end result of either event, too frequently, there develop terrible consequences from an improper end result of law — that spread seeds of social unrest — discontent — demanding *revolution* when well-controlled (however slow) — and *insurrection* when less well-controlled!

Certainly for a series of one district court judge, five appeal court judges, and seven supreme court judges — for these good men to have denied to petitioner a view into their reasoning out of his complaints of their denial of due process and of property rights, *overtly* (now) breaking

OUR LAW (philosophy — ethics — logic), OUR CODE OF JUDICIAL CONDUCT — OUR CANONS OF JUDICIAL ETHICS — must be considered as cruel and unusual punishment of any CITIZEN able to comprehend, and willing to answer — to question — as have I!

And, if there be further interest in pursuing my problem beyond these few pages, I beg you to read remarks relating to the true juris prudence of Justices Tate, Rieg, Rubin, Levi, Friendly, Frankfurter, Douglas, Stewart, and White. (Appendix No. 2, Pages 46-67)

Respectfully submitted,

s/ Samuel L. Lieber, M.D.

SAMUEL L. LIEBER, M.D.
In Proper Person

s/ Ralph W. Parnell, Jr.

RALPH W. PARNELL, JR.
Attorney for Petitioner

LIST OF ALL PARTIES TO THE PROCEEDINGS

1. Supreme Court Judges
   Supreme Court of Louisiana
   301 Loyola Avenue
   New Orleans, Louisiana 70112

   Justice Jack Crozier Watson
   Justice John A. Dixon, Jr.
   Justice Pascal F. Calogero, Jr.
   Justice Walter F. Marcus, Jr.
   Justice James F. Dennis
   Justice Gerald Federoff
   Justice Harry T. Lemmon

2. Judges of the Second Circuit Court of Appeals
   Caddo Parish Courthouse
   Shreveport, Louisiana 71101

   Judge Jasper E. Jones
   Judge Charles A. Marvin
   Judge Fred W. Jones, Jr.
   Judge Pike Hall
   Judge O. E. Price

3. First Judicial District Court
   Caddo Parish Courthouse
   Shreveport, Louisiana 71101

   Judge Cornelius J. Bolin

4. Defendant
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   Shreveport, Louisiana 71107

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6. Petitioner:
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7. Attorney for Petitioner:
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Shreveport, Louisiana 71101

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	The Mississippi River, and the navigable rivers and waters leading into the same, and into the Gulf of Mexico, shall be common highways, —			
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	Section 14-8. Permit for piers, boathouses and docks.			
	a. "Piers, boat houses and docks for the exclusive use of their owners will be authorized within the 172 foot contour line by permit only. These structures will be subject to the approval of the Department of Public Utilities and must be maintained in good repair." (Ord. No. 40, 1964)			
	Section 14.11			
	"Piers and wharves, stationary and/or floating, and other facilities extending into the Cross Lake reservoir will be limited to a maximum total length of not more than 300 feet, perpendicular to the water line, from the 172 foot contour line." (Ord. No. 40, 1964, Sec. 3)			
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				514
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	Art. 3. Customs result from a long series of actions constantly repeated, which have by such repetition, and by uninterrupted acquiescence, acquired the force of a tacit and common consent.			

		Pet	App I	App II
	Art. 13. When a law is clear and free from all ambiguity, the letter of it is not to be disregarded, under the pretext of pursuing its spirit.			
	Art. 14. The words of a law are generally to be understood in their most usual signification, without attending so much to the niceties of grammar rules as to the general and popular use of words.			
	Art. 15. Terms of art or technical terms and phrases, are to be interpreted according to their received meaning and acceptation with the learned in the art, trade or profession to which they refer.			
	Art. 16. Where the words of law are dubious, their meaning may be sought by examining the context with which the ambiguous words, phrases and sentences may be compared, in order to ascertain their true meaning.			
	Art. 18. The universal and most effectual way of discovering the true meaning of a law, when its expressions are dubious, is by considering the reason and spirit of it, or the cause which induced the legislature to enact it.			
	Art. 21. In all civil matters, where there is no express law, the judge is bound to proceed and decide according to equity. To decide equitably, an appeal is to be made to natural law and reason, or received usages, where positive law is silent.			
5.	Code of Judicial Conduct, Louisiana State Supreme Court Canon 1	6,9	84	6,18 27

		Pet	App I	App II
	A Judge Should Uphold the Integrity and Independence of The Judiciary.			
	An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective. As a necessary corollary, the judge must be protected in the exercise of his judicial independence.			
	Canon 3			
	A Judge should perform the Duties of His Office Impartially and Diligently.			
	A. Adjudicative Responsibilities			
	A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor, or fear of criticism.			
6.	Canons of Judicial Ethics, Louisiana State Supreme Court	6,10	84 107	6,18 27 186 189 196 256 270 276 340 451 486 521 566 574 576
	Canon III			
	Constitutional Obligations and Influence of Decisions Upon the Development Of The Law			
	It is the duty of all justices and the judges of the Courts of Louisiana to support and defend the Constitution of the United States and the Constitution of Louisiana; in so doing, they should fearlessly observe and apply fundamental limitations and guarantees.			

A judge should be mindful that his duty is the application of general law to particular instances, and that he violates his duty as a minister of justice under such a system if he seeks to do what he may personally consider substantial justice in a particular case and disregards the general law as he knows it to be binding on him. Such action may become a precedent unsettling accepted principles and may have detrimental consequences beyond the immediate controversy. He should administer the office with a due regard to the integrity of the system of the law itself remembering that he is not a depositary of arbitrary power, but a judge under the sanction of the law.

7. Texts

a) The "New" Judicial Solution: Occasions For and Limits To Judicial Creativity. Albert Tate, Jr. Circuit Judge, United States Court of Appeals for the Fifth Circuit Tulane Law Review, Vol. 54, pg. 877-915. 1980..... App. II 46

b) Judicial Interpretation of Written Rules Alfred Rieg, Professor at the Faculty of Law and Political Science, Director of the Institute of Comparative Law, Strasbourg France Louisiana Law Review, Vol. 40, 1979 ..... App. II 51

c) Judicial Review in the United States Alvin B. Rubin, Judge, United States Court of Appeals for the Fifth Circuit Louisiana Law Review, Vol. 40, 1979 ..... App. II 54

d) A Theory of Criminal Justice Hyman Gross. New York, Oxford University Press, 1979 ..... App. II 58

e) Equal Justice Under Law; Bicentennial Lecture Series, Edward H. Levi, Introductory Remarks, United States Department of Justice. U.S. Government Printing Office: 1977 0-241-092 ..... App. II 60

f) Equal Justice Under Law; Bicentennial Lecture Series, "The Constitution." The Honorable Henry J. Friendly, Senior Judge. The United States Court of Appeals for the Second Circuit 1-29-76..... App. II 60

g) Equal Justice Under Law; Bicentennial Lecture Series, "Equal Justice Under Law." Charles Morgan Jr. 9, October 1976, Birmingham, Alabama..... App. II 62

h) Due Process of Law. Joel M. Gora. American Civil Liberties Union. National Textbook Company 1977..... App. II 63

i) Due Process of Law. Joint Anti-Fascist Refugee Committee v. McGrath 341 U.S. 123 (1951). Mr. Justice Frankfurter, concurring..... App. II 63

j) Due Process of Law. Joint Anti-Fascist Refugee Committee v. McGrath. Mr. Justice Douglas, concurring..... App. II 65

k) Due Process of Law. Fuentes v. Shevin 407 U.S. 67 (1972). Mr. Justice Stewart..... App. II 65

l) Due Process of Law. Goss v. Lopez 419 U.S. 565 (1975). Mr. Justice White ..... App. II 67

m) Louisiana State Bar Association. Attorney's Desk Book. Code of Professional Responsibility. Canon 3 ..... App. II 139

n) Louisiana State Bar Association. Attorney's Desk Book. Code of Professional Responsibility. Canon 6 ..... App. II 140

o) Louisiana State Bar Association. Attorney's Desk Book. Code of Professional Responsibility. Canon 7 ..... App. II 141

p) Louisiana State Bar Association. Attorney's Desk Book. Code of Professional Responsibility. Canon 8 ..... App. II 150

q) Handbook of Law Study. Ferdinand Stone. Tulane 1952 ..... App. II 152

r) Public Responsibilities of The Learned Professors. John W. Wade, Dean and Professor of Law, Vanderbilt University School of Law. Louisiana Law Reviews, Vol. 20, 1960, Pages 130-39 ..... App. II 154

s) Education for Professional Responsibility. Robert E. Mathews, Professor of Law, Ohio State University. Louisiana Law Review, Vol. 21, 1960, Pages 140-52 ..... App. II 160

t) Equal Justice Through the Law. Charles E. Wyzanski, Jr. Tulane Law Review, Vol. 47, #4, June 1973, Pg. 951-60.... App. II 163

u) The Judge: The Extent and Limit of His Role in Civil Matters. Roger Perrot. Tulane Law Review, Vol. 50, 1976, Pages 495-509 ..... App. II 164

v) The Judge: The Extent and Limit of His Role in the Civil Law Jurisdiction. Joe W. Sanders. Tulane Law Review, Vol. 50, 1976, Pages 511-16.....App. II 168

w) Due Process and Substantive Accountability: Thoughts toward a Model of Just Decision-making. J. Michael Veron. Louisiana Law Review, Vol. 38, #4, Summer 1978, Pages 919-54.....App. II 170

A CONCISE STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

The date of the judgment or decree sought to be reviewed and the time of its entry — January 25, 1982.

The statutory provisions believed to confer on this Court jurisdiction to review the judgment or decree in question by extraordinary writs.

The Constitution of the United States of America

The Bill of Rights

Article 5 "—, nor shall any person — be deprived of life, liberty, or property, without due process of law; —."

Article 14 "—No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of laws."

Article 8 — Cruel and unusual punishment inflicted
See Opening Remarks

CONSTITUTIONAL QUERIES DURING THE CASE

See Table of Authorities, Appendix I, and Appendix II (Separately presented, due to excess volume of about 600 pages.)

CONCISE STATEMENT OF THE CASE CONTAINING THE FACTS MATERIAL TO THE CONSIDERATION OF THE QUESTIONS PRESENTED

Local City authority allowed a property owner to angle pier into area which petitioner maintains to be his own riparian area of "exclusive rights" as given by local Ordinance #40, 1964. Petitioner has maintained that he has been denied proper rights of use including ingress, egress, view, etc. The City denied due process in not advertising to those parties involved, Authority giving testimony that "for the first time ever" group pier placement was being instituted, city authorities refusing to define riparian area of "exclusive rights" granted by said local ordinance.

District Court Judge accepted legislative intent which specified pier placement at 90° from lake reservoir boundary line which was specified in detail by legislative intent. Then Judge refused to immediately remand case to be implemented by city, refusing to give petitioner relief, refusing to apply nondiscretionary law.

Appeal Court refused to delineate riparian area involved, refused to apply nondiscretionary law, refused to apply proper jurisprudence (legal fraud?) (so stated by chief appeals court judge). Then, unconstitutionally, appeal court denied rehearing request on a tie vote, thereafte when cautioned that this was an unconstitutional act, refused to complete said interlocutory vote, all

denials of due process, possibly changing from legal fraud to criminal fraud at the time of becoming knowledgeable of act of unconstitutionality, and refusing to act appropriately!

Supreme Court judges refused to apply non-discretionary law, refused to define riparian area, unconstitutionally utilized extinct Louisiana Civil Code, refused to apply extant and pertinent Louisiana Civil Code in answering the problem, and finally denied rehearing after being cautioned of the above!

Finally, on requests of writs of prohibition, mandamus, error, etc., Louisiana Supreme Court refused to correct those stated unconstitutional acts of itself, of the appeal court, of the district court, of the city, and in particular refused to force the appeal court to complete its interlocutory vote on whether or not to have a rehearing, allowing denial of due process at both appeal court and supreme court levels, after having been formerly cautioned about this terrible problem.

Also, it is to be noted that although under the jurisdiction of the Supreme Court, said court refused to force action involving due process on the part of the Judiciary Commission, to which petitioner had formerly complained about each and every judge involved in this case for specified reasons! Said Judiciary Commission had refused due process according to its own rules, which had been handed down by the Louisiana State Supreme Court!

Petitioner requests perusal of Appendix I, Sections 17 through 27, which detail constitutional questions raised by Petitioner (for page numbers, kindly refer to Section 9 – v.i.)

STATEMENT OF THE CASE: QUESTIONS PRESENTED FOR REVIEW

1. Denial of Due Process
   a) City
   b) District Court
   c) Appeals Court
   d) Supreme Court
2. Denial of Property Rights
   a) City
   b) District Court
   c) Appeals Court
   d) Supreme Court
3. Denial of Equal Rights Under the Law
   a) City
   b) District Court
   c) Appeals Court
   d) Supreme Court
4. Infliction of Cruel and Unusual Punishment
   a) City
   b) District Court
   c) Appeals Court
   d) Supreme Court

The most concise statement of the questions: By refusing to delineate side boundries of those riparian areas to which exclusive rights of use were granted to each riparian landowner — thereafter by denial of due process at each and every level, the City of Shreveport, Louisiana, and the District, Appeals, and Supreme Courts of Louisiana have injured Petitioner, whose relief can derive only from action of the Supreme Court of the United States!

I. City of Shreveport, Louisiana

A. Denial of Due Process, City of Shreveport, Louisiana

1. Withholding of informing those parties to be affected by *group* placement of piers off perpendicular — *"for the first time ever."*

B. Denial of Property Rights, City of Shreveport, Louisiana

1. Refusing to define side boundary lines of riparian areas, "exclusive rights" to which had been granted through said local ordinance.
2. Permitting pier construction off perpendicular, in clear violation of said local ordinance that had been worded intentionally to prevent that very action.

C. Denial of equal rights under the law, City of Shreveport

1. Refusing to administer a non-discretionary law according to concise specifications, but applying personal ideas (and not those of THE PEOPLE, as represented by THE LAW)!

D. Infliction of cruel and unusual punishment, City of Shreveport

See Opening Remarks

II. First Judicial District Court, Louisiana

A. Denial of Due Process, First Judicial District Court, Louisiana

1. After accepting legislative intent that precisely described pier placement angulation at 90°, and pier length of not greater than 300 ft. from the lake reservoir water-line (172 ft. contour line, Cross Lake, Shreveport, Louisiana) —

said District Court Judge refused to remit problem to City to implement, and, because said Judge stated confusion, even though he had accepted said legislative intent, ruled out its use in this case.

2. Refusing to abide by the law, and applying his own brand of equity — specifically denied him by THE LAW, THE CODE OF JUDICIAL CONDUCT, THE CANONS OF JUDICIAL ETHICS.

   a. THE LAW

      1) Ordinance No. 40, 1964, City of Shreveport, Louisiana, mandating pier placement at 90° from water-line (non-discretionary law).

   The City of Shreveport in 1964, by the contract between Self and above-mentioned private property owners (present and future), the Ordinancy No. 40 of 1964, placed into the city Code, in Section 14-6, 14-8, and 14-11, gave total riparian rights on Cross Lake to said property owners.

   Section 14-6. General rights of adjacent property owners.

   > The property owners adjacent to Cross Lake shall have the exclusive right to the use of the area which abuts their property and lies between the 172 ft. contour line and the water level of Cross Lake providing that all rules and regulations, restrictions, and reservations, including waiver of any claims against the city for injuries or damages, are agreed to by such property owners." (Ord. No. 40, 1964, Sec. 3)

Section 14-8. Permit for piers, boathouses and docks.

a. "Piers, boat houses and docks for the exclusive use of their owners will be authorized within the 172 foot contour line by permit only. These structures will be subject to the approval of the Department of Public Utilities and must be maintained in good repair."

Section 14-11

"Piers and wharves, stationary and/or floating, and other facilities extending into the Cross Lake reservoir will be limited to a maximum total length of not more than 300 feet, perpendicular to the water line, from the 172 foot contour line." (Ord. No. 40, 1964, Sec. 3)

2) Article 21, Louisiana Civil Code, 1870.

In all civil matters, *where there is no express law,* the judge is bound to proceed and decide according to equity. To decide equitably, an appeal is to be made to natural law and reason, or received usages, *where positive law is silent.* (Emphasis added)

3) Article 1 of Civil Code

Law is a solemn expression of legislative will.

4) Article 2 of Civil Code

It orders and permits and forbids, it announces rewards and punishments, its provisions generally relate not to solitary or

singular cases, but to what passes in the ordinary course of affairs.

5) Article 13 of Civil Code

When a law is clear and free from all ambiguity, the letter of it is not to be disregarded, under the pretext of pursuing its spirit.

6) Article 15 of Civil Code

Terms of art or technical terms and phrases are to be interpreted according to their received meaning and acceptation with the learned in the art, trade or profession to which they refer.

7) Article 18 of Civil Code

The universal and most effectual way of discovering the true meaning of a law, when its expressions are dubious, is to consider the reason and spirit of it, or the cause which induced the legislature to enact it.

8) Article 716 of Civil Code — Servitude of View

9) Article 697 of Civil Code — Right of View

10) Proviso, 12th Congress, Session I, Chapter 50, 1812, p. 703.

The Mississippi River, and the navigable rivers and waters leading into the same, and into the Gulf of Mexico, shall be common highways — Authority — Twelfth Congress Session I, Ch. 50, 1812, Proviso, page 703.

At this point, Petitioner requests reader to refer to Appendix, to read his attempt to explain some of the above codes to the Louisiana Judiciary Commission, 1981.

2. b. The Code of Judicial Conduct, Louisiana Rules of Court, 1981 Cannon 1

Canon 1

A Judge Should Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective. As a necessary corollary the judge must be protected in the exercise of his judicial independence.

Canon 3

A Judge should perform the Duties of His Office Impartially and Diligently

A. Adjudicative Responsibilities

1. A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor or fear of criticism.

CANONS OF JUDICIAL ETHICS

Canon III

Constitutional Obligations and Influence of Decisions Upon the Development Of The Law

It is the duty of all justices and the judges of the Courts of Louisiana to support and defend the Constitution of the United States and the Constitution of Louisiana; in so doing, they should fearlessly observe and apply fundamental limitations and guarantees.

A judge should be mindful that his duty is the application of general law to particular instances, and that he violates his duty as a minister of justice under such a system if he seeks to do what he may personally consider substantial justice in a particular case and disregards the general law as he knows it to be binding on him. Such action may become a precedent unsettling accepted principles and may have detrimental consequences beyond the immediate controversy. He should administer the office with a due regard to the integrity of the system of the law itself remembering that he is not a depositary of arbitrary power, but a judge under the sanction of the law. (Emphasis added.)

II. B. Denial of Property Rights
See IB

C. Denial of Equal Rights Under The Law
See I.C.

D. Infliction of Cruel and Unusual Punishment
See Opening Remarks

III. Second Circuit Court of Appeal, Louisiana

A. Denial of Due Process,

1. Refusal to remand case and order district court judge to have city authority carry out law as per accepted legislative intent (or to declare mistrial).
2. Refusal to apply nondiscretionary law as noted above.
3. Refusal to alter Opinion after being cautioned by chief judge that the jurisprudence applied was inapplicable (legal fraud?).
4. Denying completion of vote on rehearing interlocutory judgment, having unconstitutionally declared that a tie vote on rehearing denied Citizen's right to rehearing, Louisiana Law demanding completion of any judgment by majority vote.
5. Refusing to complete said tie vote, stating that the problem was moot in spite of fact that action of denying completion of vote is unconstitutional, again denial of due process (legal fraud? now changing to criminal fraud? — when the court, now well informed, still refused to correct its injuries to the citizen).

B. Denial of Property Rights
See IB

C. Denial of Equal Rights Under The Law
See IC

D. Infliction of Cruel and Unusual Punishment
See Opening Remarks

IV. Supreme Court, Louisiana

A. Denial of Due Process, Supreme Court, Louisiana

1. Accepting case under its appellate supervisory jurisdiction, unbeknowst in error, rather than remanding case for completion of tie vote to complete this interlocutory judgment.
2. Refusal to apply nondiscretionary law, —.
3. Using extinct and not extant Louisiana Civil Code Articles (Judicial Error).
4. Refusing to rehear, after having been cautioned of use of extinct law and of abuse of nondiscretionary law, yet not denying said law's constitutionality, thus replacing The People's Equity (that of The Law) — with his own, personal, subjective brand (legal fraud? changing to other fraud? after being cautioned, yet refusing to act).
5. Refusing to remand case to Court of Appeal for completion of interlocutory judgment, and declaring its actions null and void, relating to its judgment under erroneous appellate supervisory jurisdiction, when, at the time, it could have acted only through its plenary supervisory jurisdiction (the laws of applying and utilizing each jurisdiction differing).
6. Refusing to issue appropriate Writs of Certiorari, Error, Mandamus, and/or Prohibition, relating to all above unconstitutional acts, some related to the Constitution of The State of Louisiana, and others related to the Constitution of the United States of America.

B. Denial of Property Rights
See I.B.

C. Denial of Equal Rights Under The Law
See I.C.

D. Infliction of Cruel and Unusual Punishment
See Opening Remarks

CONSTITUTIONAL QUERIES

FEDERAL QUESTIONS SOUGHT TO BE REVIEWED

Appendix II — Page

1. Application for Rehearing 495
Opinion and Judgment by the Supreme Court of Louisiana on April 17, 1981. Applicant's Brief filed on Behalf of Plaintiff — pages 475-82. Assignment of Errors and Brief on Facts and Law relating to use of amended inapplicable Code, etc.

2. Prayer for Writs, 31 December 1981 2,3,4
Page 2, noting Appeal Court *not* having completed its vote on whether or not to allow a rehearing.

Page 2, noting request for Supreme Court to answer a certified question that it would have to do constitutionally, if such answer would shorten potential future court actions.

Page 3, noting judicial error in Supreme Court opinion considered unconstitutional, relating to use of extinct and not extant Civil Code, as well as refusal to apply non-discretionary law.

Page 4, noting judicial refusal to obey Louisiana Civil Code.

3. Brief to Judiciary Commission (included in above Prayer for Writs 14

   Pages 16-19 — "Catechism," noting some unconstitutional acts at each court level, relating to Louisiana Civil Code, Code of Judicial Conduct and Canons of Judicial Ethics. 16

4. Other locations of comments on Federal questions follow:

   Pages: Due Process: 100, 186, 196, 208, 245, 256, 270, 276, 312, 451, 429!, 443-4!, 451, 486, 525, 475-82!

   Property Rights: 100, 111, 132, 185, 248, 443-4!, 475-82!

   Equal Protection: 100, 125, 192, 227-8, 248, 251, 253, 255, 293, 312, 443-4!

ARGUMENTS ON REASONS FOR ALLOWANCE OF THIS WRIT

CONSIDERATIONS GOVERNING ISSUANCE OF EXTRAORDINARY WRITS

(Rules 17-1-c, 21j, and 26)

The Writ will be in aid of the Ccurt's appellate jurisdiction — for, if right, petitioner's pleas relating to continuing replication of judicial blunders that deny his constitutional rights — such pleas, *now*, can be effectively altered only by a power more authoritarian than that of a State Supreme Court! And, if so altered, will be aiding The United States Supreme Court's appellate jurisdiction by proving its rarely used powers of correcting the flagrantly abusive powers of some judges who apparently have set their individual ideations above such authority as granted them by THE PEOPLE!! by *forcing* such ministers to *RULE BY LAW* and *not* by WHIM!

Exceptional circumstances that warrant the exercise of the Court's discretionary powers, noting that adequate relief can not be had in any other form, or from any other court:

> It is to be noted that there is overt denial of due process and denial of rights of property use to petitioner, from the city, from the state district court, from the state appeals court and from the state supreme court. It is also noted that the state supreme court has denied petition for writs involving its plenary jurisdiction, leaving Petitioner no other recourse than to appeal to the United States Supreme Court! Possible legal and/or other fraud on the part of the state judiciary, particularly after having been duly

cautioned at each and every court level, as well as by formal complaints to the State Judiciary Commission, thereafter refusing to correct acts considered wrong by petitioner, said petitioner avows that the primary acts of apparent unbeknownst legal fraud changed to overt acts of fraud and of persecution, considered cruel and unusual punishment for him who considers himself to be a reasonably Good Citizen!

STATE OF LOUISIANA
PARISH OF CADDO . . .

BEFORE ME, the undersigned authority, a Notary Public in and for said Parish and State, duly commissioned, qualified and sworn, personally came and appeared RALPH W. PARNELL, JR., who, after being duly sworn, did depose and state:

That he has mailed, on this 24th day of April, 1982, postage prepaid, a copy of the foregoing Petition for Extraordinary Writs of Prohibition, Mandamus, or Both in the Alternative to each of the following:

Justice John A. Dixon, Jr.
Supreme Court of Louisiana
301 Loyola Avenue
New Orleans, Louisiana 70112

Justice Jack Crozier Watson
Supreme Court of Louisiana
301 Loyola Avenue
New Orleans, Louisiana 70112

Justice Pascal F. Calogero, Jr.
Supreme Court of Louisiana
301 Loyola Avenue
New Orleans, Louisiana 70112

Justice Walter F. Marcus, Jr.
Supreme Court of Louisiana
301 Loyola Avenue
New Orleans, Louisiana 70112

Justice James F. Dennis
Supreme Court of Louisiana
301 Loyola Avenue
New Orleans, Louisiana 70112

Justice Gerald Federoff
Supreme Court of Louisiana
301 Loyola Avenue
New Orleans, Louisiana 70112

Justice Harry T. Lemmon
Supreme Court of Louisiana
301 Loyola Avenue
New Orleans, Louisiana 70112

Judge Jasper E. Jones
Second Circuit Court of Appeals
Caddo Parish Courthouse
Shreveport, Louisiana 71101

Judge Charles A. Marvin
Second Circuit Court of Appeals
Caddo Parish Courthouse
Shreveport, Louisiana 71101

Judge Fred W. Jones, Jr.
Second Circuit Court of Appeals
Caddo Parish Courthouse
Shreveport, Louisiana 71101

Judge Pike Hall
Second Circuit Court of Appeals
Caddo Parish Courthouse
Shreveport, Louisiana 71101

Judge O. E. Price
Second Circuit Court of Appeals
Caddo Parish Courthouse
Shreveport, Louisiana 71101

Judge Cornelius J. Bolin
First Judicial District Court
Caddo Parish, Louisiana 71101

Mr. Durward R. Rust (Defendant)
5613 Lakeshore Drive
Shreveport, Louisiana 71107

Mr. Joseph L. Hargrove, Jr.
Hargrove, Guyton, Ramey & Barlow
1100 Mid South Towers
Shreveport, Louisiana 71101
(Attorneys for Defendant)

That the above mailing took place within the time permitted.

S/ Ralph W. Parnell, Jr.
RALPH W. PARNELL, JR., Attorney for Petitioner

SWORN TO AND SUBSCRIBED before me, Notary, this 24th day of April, 1982.

S/ Frank S. Kennedy
Frank S. Kennedy, Notary Public in and for Caddo Parish, Louisiana

APPENDIX I

★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★

CASE NUMBER_____

IN THE

United States Supreme Court

TERM FOR:_____

★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★

IN RE: SAMUEL L. LIEBER, M.D.

★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★

ON PETITION FOR PLENARY WRITS OF PROHIBITION, MANDAMUS, AND ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA RE: DENIAL OF PETITION FOR WRITS OF PROHIBITION, MANDAMUS, ERROR — CASE NUMBER: 82-C-0024 (ORIGINAL CASE NUMBER: 80-C-2514)

★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★

APPLICATION FOR EXTRAORDINARY WRITS OF PROHIBITION, MANDAMUS, OR BOTH IN THE ALTERNATIVE

★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★

Counsel of Record:

RALPH W. PARNELL, JR.
1212 Mid South Towers
Shreveport, Louisiana 71101
Telephone No. (318) 221-1601

The Supreme Court of the State of Louisiana

NO. 80-C-2514

SAMUEL L. LIEBER

vs.

DURWARD RUST

In re Samuel L. Lieber applying for Writ of Review No. 254,888 on the docket of the First Judicial District Court for the Parish of Caddo, and No. 14,249 on the docket of the Court of Appeal, Second Circuit, State of Louisiana.

And, whereas, the Court has this date, pursuant to Article 5, Section 5, of the Constitution of Louisiana made and issued the following order, to-wit — "It is ordered that the writ of review issue; that the Court of Appeal send up the record in duplicate of the case, and that counsel for all parties be notified."

Now, therefore, the said Court of Appeal is hereby commanded, in the name of the State of Louisiana and of this Honorable Court, to send up forthwith to this Court, at the City of New Orleans, the record in duplicate of the above entitled case.

Witness the Honorable Justices of the Supreme Court of the State of Louisiana, on this 5th day of December, in the year of Our Lord, One Thousand, Nine Hundred and Eighty.

Frans J. Labranche, Jr.
Clerk of Court

The Supreme Court of the State of Louisiana

NO. 80-C-2514

SAMUEL L. LIEBER

vs.

DURWARD RUST

In Re: Samuel L. Lieber, applying for Certiorari, or writ of review, to the court of appeal Second Circuit, Parish of Caddo, Number 14,249.

December 5, 1980

Granted. (See order attached.)

JAD
PFC
JLD
FAB
HTL

Supreme Court of Louisiana
December 5, 1980

_____

Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

NO. 80-C-2514

SAMUEL L. LIEBER
versus
DURWARD RUST

ON WRIT OF REVIEW TO THE COURT OF APPEAL, SECOND CIRCUIT, STATE OF LOUISIANA

WATSON, Justice.*

This is a dispute between adjoining property owners on the shore of Cross Lake about the proper location of a pier and boathouse. Plaintiff, Samuel L. Lieber, filed suit when defendant, Durward Rust, commenced construction of a wharf which angles across the water in front of Lieber's property.

The trial court dismissed plaintiff's suit, and the Court of Appeal affirmed the judgment. Lieber v. Rust, 388 So.2d 836 (La. App. 2 Cir. 1980). A writ of review was granted to plaintiff. — So.2d — (La., 1980)

The shore area of navigable Cross Lake, the space between the water and the contour line, is a public thing. By Act 31 of 1910,[1] the legislature authorized sale of the

[1] Act 31 of 1910 provides:

"Authorizing the Register of Land Office to sell and convey to the City of Shreveport, the bed of what is known as Cross Lake in the Parish of Caddo, and fixing the terms and conditions of such sale, reserving to the State of Louisiana all minerals and mineral rights on and under said lands.

"Section 1. Be it enacted by the General Assembly of the State of Louisiana; that in pursuance to due and legal notice published in the

Parish of Caddo of the intention to apply for the passage of this law, due proof having been made thereof this body; That the Register of the State Land Office be and he is hereby authorized and empowered as hereinafter provided to sell and convey to the City of Shreveport, a municipal corporation in the Parish of Caddo, all that portion of land belonging to the State of Louisiana in what is known as the bed of Cross Lake, particularly that portion of the bed of said lake embraced within the traverse lines thereof in Section 25, Township 18 north, Range 16 west; Sections 20, 21, 28, 29, 30, 31, 32, and 33 in Township 18 north, Range 15 west and Sections 5 and 6, 1 and 12 in Township 17 north, Range 15 west, and Sections 23, 24, 25, 26, 27, 34, 35, 36, Township 18 north Range 15 west, and Sections 28, 29, 30, 31, 32, 33, 34 of Township 18 north, Range 14 west, and Sections 4, 5, 6 and 7 of Township 17 north, Range 14 west, for the purpose of enabling said city to provide a water supply of good, pure and wholesome water for the citizens of the City of Shreveport, Louisiana, as now constituted or hereafter extended reserving to the State of Louisiana all minerals and mineral rights on and under said lands.

"Section 2. Be it further enacted, etc., That immediately after the termination of the suit of the Cross Lake Shooting and Fishing Club, Plaintiff in Error, vs. The State of Louisiana, No. 443 of the October Term 1909 of the Supreme Court of the United States, in the event said suit shall terminate favorable to the State and its title to said lands herein above described involved in said suit be maintained, it shall be the duty of the Register of the Land Office to cause accurate surveys to be made of the bed of said lake, at the expense of the said City of Shreveport, and embrace within the traverse lines thereof to determine the acreage of said land, and on the payment to him, by the City of Shreveport or its legal representatives of the sum of One Dollar per acre for each acre of land so embraced within the traverse lines of said lake in the sections, townships and ranges mentioned, he shall convey to the said City of Shreveport the said lands above described, embracing what is now the unsurveyed lands in the bed of said Cross Lake, and thenceforth the said lands shall become vested in the said City of Shreveport for the purposes and subject to the conditions of this Act, and the net funds arising from said sale after payment of the fees of the Register of the Land Office and the cost, expenses and attorney's fees incurred by the State in the aforesaid suit to maintain the title of the State to said lands shall be placed to the credit of the Board of Commissioners of the Caddo Levee District.

"Section 3. Be it further enacted, etc., That the said lands so conveyed to the City of Shreveport shall be used by it as a reservoir or storing basin for water to be used by said city for the purpose of supplying itself and its citizens with a good and wholesome supply of water, and should the said City of Shreveport fail to utilize the said bed of said lake for said purpose within ten years from the date of the passage of this Act or afterward

lake bed from the State to the City of Shreveport for use as a water reservoir. Act 39 of 1926[2] granted the City control of the shore area up to the 172 foot contour line.

---

should ever cease to utilize it for said purpose, then the said land shall revert back and become the property of the State of Louisiana, subject to the repayment to the City of Shreveport of the purchase price but without any interest.

"Section 4. Be it further enacted, etc., That the City of Shreveport in the protection and conservation of its water supply is hereby granted full and plenary power over the said lake and may make such rules and regulations for the government thereof as its City Council may from time to time determine, and may enforce such rules and regulations by fine or imprisonment as is now provided for the enforcement of its ordinances under its charter and amendments thereto.

"Section 5. Be it further enacted, etc., That all laws or parts of law, contrary to or in conflict with this Act, be and the same are, hereby repealed."

[2]Act 39 of 1926 provides:

"To authorize and empower the City of Shreveport to adopt, exercise and enforce police and sanitary regulations and ordinances over the bed and waters of Cross Lake and the area surrounding same with its tributaries for a distance of five thousand feet from the 172 foot mean gulf level contour line of said lake for the protection of the same from pollution and contamination as a water supply for the City of Shreveport.

"Whereas due notice has been given of the intention to apply for the passage of this Act by publication for thirty days and proof has been made of said publication to Legislature as required by Article IV, Section 6 of the Constitution of 1921.

"Section 1. Be it enacted by the Legislature of Louisiana, That the City of Shreveport is hereby granted full power and authority to adopt and enforce all needful police and sanitary ordinances and regulations for the protection of the bed and waters of Cross Lake purchased from the State of Louisiana for a water supply and now in use as such from pollution and contamination from any source and is likewise granted similar power and control over the area surrounding said lake for a distance of five thousand feet from the Meander Contour Line, which extends to the 172 foot mean gulf level as well as over the streams and tributaries of said lake, so as to prevent its pollution, contamination or destruction by salt water, refuse, filth, or from any other cause that would in any manner whatsoever endanger or render harmful or unsanitary the use of the waters of the Lake by the citizens of the City of Shreveport. That the City shall have the right

Lieber and Rust own contiguous lots one and two in unit number two, Willow Ridge Subdivision. Each lot extends on the lake side to the 172 foot contour line, which is the line of demarcation between the private owners and the City. State v. Vozeman, 156 La. 635, 101 So. 4 (1924). The lots are subject to recorded title restrictions which provide in part that:

> "Boat houses, fishing piers and other construction extending into Cross Lake shall be permitted to exist on, from, or connected to any lot with prior written approval of the Architectural Control Committee subject however to full compliance with all ordinances and regulations of the City of Shreveport."

By coincidence, Lieber and Rust are two of the three members of the Architectural Control Committee. There are no standards to govern this Committee's discretion. Approval of the Committee is by majority vote. According to Weyman Oden, Jr., the developer of the six lot subdivision and the third member of the committee, there are no specific standards for construction of piers and boathouses because:

> "...The thought and idea of the whole thing was to encourage the use of materials on boathouses that would blend with the natural lake setting and surroundings."

Rust did not apply for approval of his boathouse by the Committee.

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and authority through its Board of Health, Public Safety Department, Public Utilities Department, or otherwise, to inspect all of said property and the drainage area of said Cross Lake and to enforce its ordinances and regulations by fine or imprisonment through the proper Courts of the State of Louisiana."

Shreveport Ordinance No. 40 of 1964 granted its Department of Public Utilities control of all improvements on Cross Lake and its shore. It provides:

> "The property owners adjacent of Cross Lake shall have the exclusive right to the use of the area which abuts their property and lies between the 172 foot contour line and the water level of Cross Lake, providing that all rules and regulations, restrictions and reservation, including waiver of any claims against the City of Shreveport, Louisiana, for injuries or damages, are agreed to by said property owners.
>
> "Piers, boat houses and docks for the exclusive use of their owners will be authorized within the 172 foot contour line by permit only. These structures will be subject to the approval of the Department of Public Utilities and must be maintained in good repair.
>
> * * *
>
> "Piers and wharves, stationary and/or floating, and other facilities extending into the Cross Lake reservoir will be limited to a maxium (sic) total length of not more than 300 feet, perpendicular to the water line, from the 172 foot contour line . . . "

The water line and the contour line tend to be parallel, although both are uneven lines. A concrete retaining wall marks the approximate location of the contour line.

On August 9, 1978, Rust acquired a permit for the construction of his boathouse and pier from Robert William Calhoun, the Superintendent of Cross Lake Patrol, by authority of the Department of Public Utilities. The patrol directed where the structure should be placed; construction was completed at that location. Rust's pier and boathouse are below the 172 foot contour line,

entirely within the area owned by the City and completely outside the subdivision. If Lieber's property lines are extended past the 172 foot contour line into the lake, a portion of the Rust pier is within their boundaries.

These lots are located on a concave curve of a shallow lake. Superintendent Calhoun testified that a permit was required, for the following purposes:

> "To be sure that no one gets blocked off. And try to have it where each one can have access to the lake. See, you have a lot of lots that run in at an angle. Therefore, we have to turn — we — they can't run down their line and straight out into the lake. If you did, there'd be a lot of people that wouldn't get access to the lake." (Tr. 177)

Bill Guin, civil engineer for the Department of Public Utilities responsible for the supervision of Cross Lake, testified that the city tried to create equity among the lot owners around this cove so that each could build a pier. "In so doing, I had to sacrifice perhaps a view." (Tr. 189)

Calhoun Allen, Commissioner of Public Utilities at the time the ordinance was passed, testified that this pier is not perpendicular to the water line or the contour line, but that section of the ordinance cannot be applied when the extended property lines intersect. The exact angle of the pier with the water or contour line is not in evidence; the exhibits indicate the variation from the perpendicular is not substantial.

Lieber's assignments of error raise three issues for decision:

> (1) Is Rust required to remove his pier for failure to obtain approval of the subdivision's Architectural Control Committee?

(2) Was Rust's permit and construction in violation of Ordinance No. 40 either because (a) it is not perpendicular to the contour line or (b) it encroaches on Lieber's exclusive right to use the area in front of his property?

(3) Does Lieber have a predial servitude which entitles him to view Cross Lake without obstructions on the shore or water?

VIOLATION OF BUILDING RESTRICTIONS

The City has statutory authority to regulate the shore and bed of Cross Lake. This includes authority over the placement of piers in that area. However, the subdivision owners agreed that any piers constructed would also be approved by their representatives on the Architectural Control Committee. The purpose of this restriction was to prevent the construction of unsightly structures detracting from the ambiance of the area. However, Lieber does not complain that the pier is an inferior structure, only that it is placed where he does not want it located. The City exercised its paramount right to dictate the location. There is no evidence that the Rust Pier and boathouse are offensive except for their placement. Plaintiff's complaint is not directed toward a question within the competence of the Architectural Control Committee. Therefore, Rust's failure to obtain approval of the Committee is immaterial.

VIOLATION OF SHREVEPORT ORDINANCE NO. 40 OF 1964

The placement of this boathouse is not arbitrary or capricious merely because it is not "perpendicular to the waterline, from the 172 foot contour line." Ordinance No. 40 of 1964. Because of the curvature of the lake, the piers

cannot all be perpendicular to the water line or the contour line. Adding to the problem is the uneven line of the shore. The variation from the perpendicular here is a de minimus thing. Depending on the point of origination, plaintiff could be either helped or hurt by a more perpendicular structure.

The ordinance grants the property owners the exclusive right to use the property between the contour line and the water, but it is clear from the language that this right is subject to the City's regulation and control. The right of use is not unrestricted. The City could not grant the landowners an unsupervised use without violating its statutory mandate to protect the lake. Compare Evans v. Dugan, 205 La. 398, 17 So.2d 562 (1944).

SERVITUDE OF VIEW

Lieber contends that Ordinance No. 40 of 1964 created a predial servitude of view. LSA-C.C. art 716.[3] However, there is no evidence that the City of Shreveport has established a servitude of view in favor of the landowners around the lake. View is a continuous, apparent servitude which can be established only by title, destination of the owner or acquisitive prescription. There is no evidence that the landowners have acquired a servitude of view. LSA-C.C. arts. 727,[4] 728,[5] 765.[6] Even if such a servitude

---

[3]LSA-C.C. art. 716 prior to its 1977 amendment provided:

"Servitudes of view are of two kinds; one which confers the right of full view with the power of preventing one's neighbor from raising any buildings which obstruct it, and the other which gives an owner the right of preventing his neighbor from having any view or lights on the side on which their estates unite, or that he exercise these servitudes according to his title."

[4]LSA-C.C. art. 727 prior to its 1977 amendment provided in pertinent part:

"Servitudes are either continuous or discontinuous.

were established, it would not necessarily apply to a structure in the adjacent lake. A building prohibition servitude, being continuous and nonapparent, can be established only by title. LSA-C.C. art. 766.[7] See Bernos v. Canepa, 114 La. 517, 38 So. 438 (1905). Plaintiff is not entitled to an entirely unobstructed view of the lake. See LSA-C.C. art. 668.[8]

"Continuous servitudes are those whose use is or may be continual without the act of man.

"Such are aqueducts, drain, view and the like...."

[5]LSA-C.C. art. 728 prior to its 1977 amendment provided:

"Again, servitudes are either visible and apparent or nonapparent.

"Apparent servitudes are such as are to be perceivable by exterior works; such as a door, a window, an aqueduct.

"Non-apparent servitudes are such as have no exterior sign of their existence; such, for instance, as the prohibition of building on an estate, or of building above a particular height."

[6]LSA-C.C. art. 765 prior to its 1977 amendment provided:

"Continuous and apparent servitudes may be acquired by title, or by a possession of ten years. The public, represented by the various parishes in this State, may also in like manner acquire a servitude by the open and public possession and use of a road for the space of ten years, after the said road or servitude has been declared a public highway by the Police Jury, provided that such servitude so acquired shall not extend beyond the width of forty feet."

[7]LSA-C.C. art. 766 prior to its 1977 amendment provided:

"Continuous nonapparent servitudes, and discontinuous servitudes, whether apparent or not, can be established only by a title.

"Immemorial possession itself is not sufficient to acquire them.

"Immemorial possession is that of which no man living has seen the beginning, and the existence of which he has learned from his elders."

[8]LSA-C.C. art. 668 provides in pertinent part:

"~~...~~Thus he who is not subject to any servitude originating from a particular agreement in that respect, may raise his house as high as he

The city determines, upon request, where structures extending into Cross Lake will be located. Although there may have been other feasible locations for this boathouse, the city's placement was not arbitrary or capricious. Judicial interference is not warranted.

For the foregoing reasons, the judgment is affirmed.

AFFIRMED.

pleases, although by such elevation he should darken the lights of his neighbors's (neighbor's) house, because this act occasions only an inconvenience, but not a real change."

Supreme Court of Louisiana

NEW ORLEANS, 70112

NEWS RELEASE # 62

FROM: CLERK OF SUPREME COURT OF LOUISIANA

On the 29th day of May, 1981, the following action was taken by the Supreme Court of Louisiana, composed of Chief Justice John A. Dixon, Jr., and Associate Justices Pascal F. Calogero, Jr., Walter F. Marcus, Jr., James L. Dennis, Fred A. Blanche, Jr., Jack Crozier Watson and Harry T. Lemmon, in the cases listed below:

REHEARING GRANTED:

80-C-1965 — Chester G. Bond, III, et ux v. Commercial Union Assurance Co.

REHEARINGS DENIED:

80-KA-1966 — State v. Michael Watson. LEMMON, J., concurs in denial. BLANCHE, J., would grant a rehearing.

80-C-2514 — Samuel L. Lieber v. Durward Rust. DIXON, C.J., & BLANCHE, J., would grant a rehearing.

The Supreme Court of the State of Louisiana

NO. 82-C-0024

SAMUEL L. LIBER
vs.
DURWARD RUST

IN RE: Samuel L. Lieber, M.D., applying for Certiorari, or Writ of Review, to the Court of Appeal, Second Circuit, No. 14,249, Caddo Parish.

January 25, 1982
Denied.

JAD
PFC
WFM
JLD
FAB
JCW
HTL

Supreme Court of Louisiana
January 25, 1982

_____
Clerk of Court
For the Court

(Judgment rendered August 18, 1980)

No. 14,249

COURT OF APPEAL SECOND CIRCUIT
STATE OF LOUISIANA

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SAMUEL L. LIEBER, *Plaintiff-Appellant*
versus
DURWARD RUST, *Defendant-Appellee*

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Appeal from the First Judicial District Court
Parish of Caddo, State of Louisiana

Hon. C. J. Bolin, Jr., Judge

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Kennedy, Goodman & Donovan

By: Frank S. Kennedy and Rellis P. Godfrey

Attorneys for Plaintiff-Appellant
Samuel L. Lieber

Hargrove, Guyton, Ramey & Barlow

By: Joseph L. Hargrove, Jr., and Joseph L. Shea, Jr.

Attorneys for Defendant-Appellee
Durward Rust

★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★

Before MARVIN, J. JONES and F. JONES, JJ.

F. JONES, Judge

Samuel L. Lieber filed suit to enjoin Durward Rust, an adjoining lot owner in the Willow Ridge Subdivision, Shreveport, Louisiana, from completing construction of a pier and boathouse on Cross Lake and to compel removal of the portion already constructed. From a judgment rejecting his demands for a permanent injunction and a mandatory injunction, plaintiff appealed, contending in substance that the trial court erred in the following respects:

(1) In holding that the subdivision restrictions did not prohibit the construction of defendant's pier and boathouse.

2) In holding that the proposed location of defendant's pier and boathouse did not violate Ordinance No. 40 of 1964 of the City of Shreveport.

(3) In refusing to hold that plaintiff had a servitude of view which was obstructed by defendant's pier and boathouse.

(4) In refusing to hold that miscellaneous civil code articles prohibited the construction of defendant's pier and boathouse.

We affirm the judgment.

The Willow Ridge Subdivision, Unit 2, was accepted by the City of Shreveport in 1975 and plat thereof was filed in the conveyance records of Caddo Parish, Louisiana, together with a "Declaration of Covenants, Conditions and Restrictions" affecting all conveyances of lots in the subdivision unit. These lots bordered on Cross Lake, with the lines of each lot extending on the lake side to the 172 foot contour line which is the point at which the city of Shreveport's ownership of the bed of Cross Lake begins.

Lieber acquired Lot 1 of the subdivision unit in 1975. Rust bought Lot 2, lying to the south of and adjoining Lieber's lot, in 1976. Subsequently, Rust purchased a strip south of and adjacent to his lot, described as 35 feet off of Lot 3.

In August 1978 Rust secured a permit from the Cross Lake Patrol of the Shreveport Department of Public Utilities for the construction of a pier and boathouse on the lake. The location of these proposed improvements was staked out by the Patrol Superintendent. Construction began, but was halted when this suit was filed.

In denying plaintiff's demands for injunctive relief, the trial judge concluded that the pertinent subdivision restrictions do not apply because they are too vague to be enforceable; that the section of the city ordinance dealing with the location of piers on Cross Lake is so ambiguous that its interpretation must yield to administrative practice; and that there is no authority for the issuance of an injunction to protect a right to a scenic view.

We now discuss the substantial legal issues raised by this appeal.

APPLICABILITY OF SUBDIVISION RESTRICTIONS

The record shows that Rust's proposed pier and boathouse are located below the 172 foot contour line, in the bed of the city-owned Cross Lake, entirely off the property comprising Willow Ridge, Unit 2.

However, appellant argues that appellee has violated subdivision restrictions[1] because he did not first submit

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[1]No building, fence, wall, or other structure shall be commenced, erected or maintained upon the properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the

his plans to the Architectural Control Committee for approval as to harmony of external design and location in relation to surrounding structures. It is his contention that these are both "building" and "use" restrictions as explained in *Smith v. DeVincent*, 322 So. 2d 257 (La. App. 2d Cir. 1975). He urges that these restrictions prohibit the "use" of one's lot in the subdivision for access to Cross Lake for the "building" therein of a pier and boathouse unless the plans are first approved by the described committee.

In the *Smith* case the owner of the subdivision lot sought to enjoin other lot owners in the subdivision from placing and maintaining mobile homes on their respective lots. This court found that the restriction in question manifested the subdivider's intent tha the residential structure on each lot be something other than a self-contained mobile home, and classified this as a "use" restriction. Obviously, that case is factually distinguishable from this case.

Dealing directly with the question presented to us, it was held in *Begnaud v. Hill*, 109 So. 2d 562 (La. App. 1st Cir. 1959) that the purchasers of lots in a subdivision covered by restrictive covenants could not enforce those covenants against property which their vendor had specifically excluded from the subdivision. Also see *Lillard v. Jet Homes, Inc.*, 129 So. 2d 109 (La. App. 2d Cir. 1961).

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nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Control Committee, composed of three (3) or more representatives appointed by "Declarant."

Section 9. *Boat Houses and Constructions Extending into the Lake:* Boat houses, fishing piers and other construction extending into Cross Lake shall be permitted to exist on, from, or connected to any lot with prior written approval of the Architectural Control Committee subject however to full compliance with all ordinances and regulations of the City of Shreveport.

Consistent with this jurisprudence, we hold that the restrictions imposed on the lots in Willow Ridge Subdivision, Unit 2, do not apply to city-owned property in the bed of Cross Lake. Consequently, Rust did not violate those restrictions by starting the construction of his pier and boathouse without first securing approval from the subdivision Architectural Control Committee.

This holding pretermits the necessity of our considering whether the involved restriction is too vague to be enforceable.[2]

However, in connection with this question the appellant argues that Rust is estopped to urge the invalidity of the building restrictions pertaining to piers and boathouses since he purchased his property subject to those restrictions, serves as a member of the Architectural Control Committee for the subdivision and abided by those restrictions in constructing his dwelling in the subdivision. The answer to this argument is that Rust is urging the *inapplicability* of the restrictions and not their *invalidity*.

In addition, on the question of estoppel, there are three necessary elements before this doctrine becomes applicable: a representation by conduct or words, justifiable reliance and a change in position to one's detriment because of the reliance. See *Wilkinson v. Wilkinson*, 323 So. 2d 120 (La. 1975). We find none of those elements present in this case.

For these reasons we find no merit in the plea of estoppel.

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[2]See *Lake Forest, Inc. et al v. Drury et al*, 352 So. 2d 305 (La. App. 4th Cir. 1977) and *4626 Corp. V. Merriam*, 329 So. 2d 885 (La. App. 1st cir. 1976).

VIOLATION OF CITY ORDINANCE

Ordinance No. 40 of 1964 of the City of Shreveport grants to the City Department of Public Utilities "full supervision and control of all improvements and developments on Cross Lake water reservoir and within the contour line, below the 172 foot mean gulf level," including the authority to issue permits for construction on the lake bed. Pertinent portions of Section 3 of the cited ordinance provide:

> "The property owners adjacent to Cross Lake shall have the exclusive right to the use of the area which abuts their property and lies between the 172 foot contour line and the water level of Cross Lake, providing that all rules and regulations, restrictions and reservations, including waiver of any claims against the City of Shreveport, Louisiana, for injuries or damages, are agreed to by said property owners.
>
> "Piers, boat houses and docks for the exclusive use of their owners will be authorized within the 172 foot contour line by permit only. These structures will be subject to the approval of the Department of Public Utilities and must be maintained in good repair.
>
> "Piers and wharves, stationary and/or floating, and other facilities extending into Cross Lake reservoir will be limited to a maxium (sic) total length of not more than 300 feet, perpendicular to the water line, from the 172 foot contour line."

The trial judge ascertained that the Lieber and Rust lots bordered on a concave or "inside curve" of the lake. Since it is not possible to determine what is "perpendicular" to a curved water line, he reasoned that this particular language contained in the ordinance is ambiguous. Therefore, he admitted the testimony of former Commissioner

of Public Utilities (1962-1970), L. Calhoun Allen, Jr. "to determine the intent of the ordinance." Finding that this did not clear up the ambiguity, the trial judge concluded:

> "It is my considered opinion that when the entire area is considered by this aerial photo rather than the single picture of the location of plaintiff's property as judged by the interior lot lines, the solution proposed and put into practice by the City of Shreveport seems reasonable, or at least as reasonable as the plan submitted by plaintiff as P-15."

Interestingly enough, neither appellant nor appellee agreed with the trial judge that the cited section of the ordinance is ambiguous.

Appellant argues that under the quoted city ordinance a subdivision lot owner is granted the exclusive use of that area abutting his lot lying between the 172 foot contour line and the actual water level of Cross Lake, with the side boundaries of the exclusive use area determined by extending side lot lines to the water level; that this exclusive use is limited to the construction of piers and boathouses in accordance with the instructions in the ordinance; that the direction of the pier is to be perpendicular to the 172 foot *contour line* since the *water level* follows the surrounding land; that to permit construction of piers in a direction other than perpendicular to the 172 foot contour line would invade the exclusive use area of adjoining the property owners; and that the court should accept the testimony of former Commissioner Allen who stated that the intent of the ordinance was to prohibit the building of piers projecting at the angle of appellee's into Cross Lake.

On the other hand, appellee takes the position that the section of the ordinance containing the clause "per-

pendicular to the water line" simply defines the manner in which the maximum total length of the pier is to be measured and does not purport to fix a direction for pier construction into the lake, since a constantly changing water line would render this impractical; that the established practice of city employees to locate piers in such a manner as to accommodate all interested parties is a reasonable implementation of the ordinance; that the "exclusive use" area is often nonexistent since the water level is frequently up to the 172 foot contour line; that this "exclusive use" area, even when in existence, is subject to the right of the City to grant permits for the construction of piers and boathouses; that since the language of the ordinance is unambiguous, testimony concerning its meaning is inadmissible; and, even if the quoted language is ambiguous, former Commissioner Allen could only relate that which factually transpired at the time of the enactment of the ordinance rather than give an opinion as to its meaning.

First, with reference to appellant's contention that his "exclusive right" area was transgressed by appellee's pier construction, it should be noted that under the terms of the subject ordinance the "exclusive right" area is restricted to the land abutting one's lot and lying between the 1972 foot contour line and the water level. In this case appellee's pier was to extend from his retaining wall out into Cross Lake. The record, including an aerial photograph of the involved lake property, indicated that appellee's retaining wall also marked the water line or water level. Consequently, there was no evidence that appellee's proposed construction infringed upon any of appellant's "exclusive right" area.

Next, we agree with the trial judge that the paragraph of Ordinance No. 40 of 1964 which provides that piers

extending into Cross Lake will be limited to a maximum "total length of not more than 300 feet, perpendicular to the water line, from the 172 foot contour line" is ambiguous. It is impossible to determine from this language whether the City of Shreveport is purporting to simply regulate the length of piers or whether it also contemplates specifying the direction of those piers into the lake. If the latter interpretation is accepted, how does one lay out a pier which runs perpendicular or at a right angle from a curved water line, as obtains in this case?

When a law is ambiguous we are mandated by La. Civil Code Art. 18 to consider "the reason and spirit of it, or the cause which induced the Legislature to enact it."

The jurisprudence of this state recognizes that statutory rules of construction of laws are as applicable to municipal ordinances as to state statutes. *Louisiana Television Broadcasting v. Total C.A.T.V.*, 341 So. 2d 1183 (La. App. 1st Cir. 1977); *Gautreau v. Board of Electrical Examiners*, 167 So. 2d 425 (La. App. 1st Cir. 1964).

The following pertinent comments concerning interpretation of an ambiguous statute are found in *Authement v. Davidson*, 366 So. 2d 986 (La. App. 1st Cir. 1978):

> "It is not one individual legislator who enacts a statute, but the entire legislative branch which acts as a whole. Thus, it is the duty of the court to ascertain the legislative intent, as a whole, in order to construe a statute, to accomplish the purposes for which it was enacted. . . .
>
> ". . . It is not the opinion of the witness-legislator as to what the legislature intended that is admissible, but rather the factual evidence considered by the legislature in enacting legislation. . . ."

Also see *Ethyl Corp. v. Collector of Revenue*, 351 So. 2d 1290 (La. App. 1st Cir. 1977).

In view of this jurisprudence the testimony of former Commissioner Allen given *his interpretation* of the ambiguous language in the ordinance was inadmissible. However, since the trial judge stated that this testimony failed to resolve the ambiguity, appellee was not prejudiced.

Since we are without the benefit of admissible evidence concerning the legislative history of the ordinance in question, we now turn to another source for statutory interpretation — the construction consistently given to the language by those charged with the duty of the administrative application. Our authority for this approach is the holding of *Ouachita Parish School Board v. Ouachita*, 362 So. 2d 1138 (La. App. 2d Cir. 1978) that:

> "The doctrine of contemporaneous construction is a well recognized tool of statutory interpretation. It provides that when an administrative body has over a long period of time placed an interpretation upon a legislative enactment, the interpretation of said body is entitled to great weight in the determination of the meaning of the legislative enactment."

Illustrative of prior cases recognizing this principle of statutory construction are *Smith v. City of Alexandria*, 300 So. 2d 561 (La. App. 3rd Cir. 1974); *Gautreau v. Board of Electrical Examiners, supra; Hester v. Louisiana Tax Commission*, 227 La. 1022, 81 So. 2d 381 (1955).

As previously explained, Ordinance No. 40 of 1964 vested in the Shreveport Department of Public Utilities supervision over Cross Lake, including control over the location of piers and boathouses. After adoption of the

ordinance applications for permits to construct improvements of this nature in the lake were submitted to the Superintendent of the Cross Lake Patrol. Upon his approval the permits were transmitted by him to the Commissioner of Public Utilities for review and either confirmation or rejection.

R.W. Calhoun, Superintendent of the Cross Lake Patrol, testified that he had issued some 50 permits for construction of piers and boathouses in the lake. the principal guideline for location of these improvements was the administrative goal of attempting to "accommodate everybody on the lake — depending upon the shape of his lot." As Calhoun pointed out, a number of the lots bordering on the lake has curved boundary lines. Running piers straight out into the lake from these lots would prevent access to the water from other lots. Therefore, the comprehensive scheme considered when locating each pier revolved around the effort to assure equal access to the lake by all lots bordering on the lake bed. Calhoun stated that this established administrative practice was followed when he approved the location of the proposed pier and boathouse for appellee.

Billy J. Guin, who as Commissioner of Public Utilities was Calhoun's superior, corroborated his employee's testimony relative to the described administrative practice which was designed to "accommodate all lot owners in the area." According to Guin:

> "The criteria that I used, and the concept of this design, was to try to create equity as between the owners of the adjacent lots around that cove. Each one should have access to the water, whereby he could build a pier."

Even former Commissioner Allen acknowledged that he

had approved a number of permits in which piers were not perpendicular to the water line or contour line because of the shape of the lot lines bordering the lake.

We find, therefore, that those city officials and employees charged with the supervision of Cross Lake under Ordinance No. 40 of 1964 had consistently construed the clause containing the phrase "perpendicular to the water line" to govern the length only of piers and not their direction. It follows, logically, that since the ordinance does not specify the direction in which a pier must extend into Cross Lake, the location of appellee's pier does not violate the ordinance. Consequently, the conclusion of the trial judge to this effect is correct.

OBSTRUCTION OF SERVITUDE OF VIEW

Appellant contends that his lot enjoys a predial servitude of view under La. Civil Code Article 716[3] (now La. CC Art. 701) which is or will be obstructed by appellee's pier and boathouse.

We find no authority for holding that the scope of a servitude of view is as expansive as appellant claims, i.e., the right to an entirely unobstructed view. However, assuming that appellant's position is correct, there is no evidence in the record to show that the claimed servitude was ever created.

Appellant concedes that the servitude of view was not established by title, but argues that it arose by "destina-

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[3]Servitudes of view are of two kinds; one which confers the right of full view with the power of preventing one's neighbor from raising any buildings which obstruct it, and the other which gives an owner the right of preventing his neighbor from having any view or lights on the side on which their estates unite, or that he exercise these servitudes according to his title.

tion of the owner" under La. CC Art. 767[4] (now La. Cc Art. 741). Yet, the language of the article itself militates against appellant's position. In this case it is obvious that appellant's ancestors in title never owned both the property where his lot is situated and the bed of Cross Lake on which appellee proposes to locate his pier. Therefore, his predecessors in title had no authority to establish a servitude of view in favor of appellant's lot across the alleged subservient estate, i.e., Cross Lake.

In a factually similar case, *Haynes v. Smith*, 85 So. 2d 326 (La. App. 2d Cir. 1956), the court rejected plaintiff's contention that his view over Cross Lake was impaired by defendant's construction of a commercial boat shed with the observation that this presented "no foundation nor justification for relief either in law or fact."

For these reasons we hold that appellant has failed to prove that he is entitled to enjoin the construction of appellee's pier and boathouse because they obstruct a servitude of view.

APPLICABILITY OF MISCELLANEOUS CIVIL CODE ARTICLES

Appellant asserts that, if for no other reason, he is entitled to injunctive relief under the provisions of one or more civil code articles[5] in addition to the article dealing with a servitude of view.

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[4]The destination made by the owner is equivalent to title with respect to continuous apparent servitudes.

By destination is meant the relation established between two immovables by the owner of both, which would constitute a servitude if the two immovables belongs to two different owners.

[5]Art. 667. Although a proprietor may do with his estate whatever he pleases, still he can not make any work on it, which may deprive his neighbor of the liberty of enjoying his own, or which may be the cause of any damage to him.

We find no merit in this argument. First, Article 667 has been limited by the jurisprudence to the conducting of ultrahazardous activities. See *Charia v. Stanley*, 359 So. 2d 291 (La. App. 4th Cir. 1978); *Hero Lands v. Texaco*, 310 So. 2d 93 (La. 1975). The article is, therefore, inapplicable to this case.

Next, Article 673 was repealed in 1976, some time before appellee began construction of his pier. It is also obviously inapplicable.

Last, appellee's pier does not constitute a "projection beyond the boundary of his estate" within the meaning of Article 697. Consequently, this article is also inapplicable.

CONCLUSION

For the reasons set forth, we affirm the judgment of the trial judge at appellant's cost.

Art. 673. He who builds either above or below his soil, adjoining the property of his neighbor, is bound to build in a perpendicular line.

Art. 697 (now La. CC Art. 663). No one shall build galleries, balconies or other projections on the border of an estate, so that they extend beyond the boundary line which separates it from the adjoining estate.

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

Office of the Clerk, Shreveport, Louisiana.
September 29, 1980

As counsel of record in the captioned case, you are hereby notified that the application or applications for rehearing filed by Plaintiff-Appellant have this day been denied, en banc.

SAMUEL L. LIEBER

versus

DURWARD RUST

Docket No. 14,249

Comments (if any were given by the Court):
HALL, J. recused.
PRICE, J. dissents from refusal to grant rehearing and assigned reasons.
MARVIN, J. dissents from refusal to grant rehearing.

Sincerely,
Harold L. Booth
Clerk of Court

cc:
Mr. Frank S. Kennedy
Kennedy, Goodman & Donovan
1212 Mid South Towers
Shreveport, La. 71101

Mr. Joseph L. Hargrove, Jr.
Mr. Joseph L. Shea, Jr.
Hargrove, Guyton, Ramey & Barlow
P. O. Drawer B
Shreveport, La. 71161

No. 14,249

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

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SAMUEL L. LIEBER, *Plaintiff-Appellant*

versus

DURWARD RUST, *Defendant-Appellee*

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ON APPLICATION FOR REHEARING

Appealed from the
First Judicial District Court for the
Parish of Caddo, Louisiana

Honorable C. J. Bolin, Jr., Judge

★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★

KENNEDY, GOODMAN & DONOVAN

By: Frank S. Kennedy and Rellis P. Godfrey

Attorneys for Plaintiff-Appellant
Samuel L. Lieber

HARGROVE, GUYTON, RAMEY & BARLOW

By: Joseph L. Hargrove, and Joseph L. Shea, Jr.

Attorneys for Defendant-Appellee
Durward Rust

★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★

Before: PRICE, MARVIN, J. JONES: and F. JONES; JJ.

PRICE, JUDGE dissents

I respectfully dissent from the refusal to grant a rehearing in this matter. The original opinion of this court holds that a developer of lakeside property cannot impose restrictive covenants to control construction of piers and boathouses extending into the publicly owned waters adjacent to the subdivision. This ruling will adversely affect the orderly development of water-front subdivisions and is not in the best interest of the public.

The *Begnaurd* and *Lillard* cases cited as support for this holding are not analogous as they do not concern the use of adjacent public property by subdivision lot owners, but to the contrary were concerned with the power of a subdivider to impose restrictions on other *privately* owned property which was excluded from the tract being subdivided. The distinguishing factor is that the defendant lot owner in this instance derives whatever right he has to use of the lakefront water belonging to the public solely through his ownership of abutting property.

Section 9 of the subdivision restrictions in question clearly require written approval from the Architectural Control Committee over and above compliance with the appropriate ordinances of the city of Shreveport before any construction of a pier or boathouse is extended from a lot into the lake.

No such approval was sought in this instance. Therefore, this court should grant a rehearing to at least resolve the issue as to whether the restriction is too vague to be enforceable as held by the trial court.

Court of Appeal
SECOND CIRCUIT
STATE OF LOUISIANA

October 14, 1981

Mr. Samuel L. Lieber, M.D.
325 Glen Erica Street
Shreveport, Louisiana 71106

In re: Samuel L. Lieber versus Durwood Rust,
No. 14,249

Dear Dr. Lieber:

I am in receipt of your written inquiry in which you question the method of disposition of this court of your application for a rehearing on the opinion rendered August 18, 1980. Your application for rehearing was denied on September 29, 1980, and your application to the Supreme Court for exercise of its supervisory jurisdiction was granted on December 5, 1980. That court rendered an opinion on April 17, 1981, affirming the judgment of the district court.

As the authority of the Supreme Court to exercise its supervisory jurisdiction may be extended at any stage of the proceedings, the question of whether this court's denial of a rehearing was by proper vote has become a moot issue and this court has no further jurisdiction in this matter.

Your request has been taken up with all of the judges who acted upon the rehearing and they all are in agreement with this view.

Very truly yours,
O. E. Price

OEP/dh
cc: Mr. Frank S. Kennedy
Kennedy, Goodman, Donovan & Parnell
1212 Mid South Towers
Shreveport, Louisiana 71101

Mr. Joseph L. Hargrove, Jr.
Mr. Joseph L. Shea, Jr.
Hargrove, Guyton, Ramey & Barlow
Post Office Drawer B
Shreveport, Louisiana 71161

The Honorable Judge O.E. Price
Louisiana Second Circuit Court of Appeals
500 Texas Avenue
Shreveport, La. 71101

RE: Samuel L. Lieber
versus
Durwood Rust
Supreme Court No. 80-C-2514
Second Circuit Court of Appeals #14,249
First Judicial District Court
Caddo Parish, #254,888

Dear Judge Price:

Thank you for your letter of October 14, 1981. I believe your statement that my "—application to the Supreme Court for exercise of its supervisory jurisdiction—" to be suggesting that such falls within the sphere of *plenary* supervisory powers, whereas it most certainly lies in the *appellate* jurisdiction of said Court!

Thus, you err in next reasoning that: As the authority of the Supreme Court to exercise its supervisory jurisdiction may be extended at any stage of the proceedings, the question of whether this court's denial of a rehearing was by proper vote has become a moot issue and this court has no further jurisdiction in this matter."

Remember that the Supreme Court did not *extend* such *plenary* supervisory jurisdiction into this case! Rather, this case was referred up on a Writ of Review (copy attached), which is *appellate* action! Such referral was undertaken because you left me the choice of either losing my case or appealing! But my decision was based on *your* error, and *the breaking of our LAW!* This error was made by the Appeals Court judges by their agreeing to a rule that is not

even in writing, — viz., that rehearing requests will be denied with a tie vote!!! This error — this illegal act — is acceded to by the local legal profession through ignorance, — through misunderstanding, — yet remains illegal! My lawyers, good and capable (as I believe each of you judges to be, — yet not perfect) felt your ruling to hold, — but it cannot, for it is unconstitutional!!!

Further, how will you judges rule on future cases, — will a tie vote prevent a rehearing again?!

Don't you understand that my query must be answered, — legally, — one way or another?! I am appealing to your discretion, to your knowledge, to your wisdom, to put knowledge to good use and not evil! Are you up to it?! (I have asked each and every judge, at each and every level, this same question!)

Are you up to it?! — if not, I must approach my problem in another way (and there *are* a few left, — the Supreme Court, — the Federal Courts, – THE PEOPLE)!

This is not moot! It matters in my case, as well as in any other case (past or future). This Appeals Court continues its jurisdiction, due to the erroneous appellate and not plenary supervisory protocol utilized, based on an *illegal*, and *incompleted* interlocutory judgment, — not a final judgment!

I appeal to your ability to understand, — to use logic, — to use ethics, — to use THE LAW, — to your CONSCIENCE, — to act here, — as you see fit, — especially relating to the enclosed regulations as listed:

(1) Canon III, Canons of Judical Ethics

(2) Louisiana Constitution, 1912

(3) Louisiana Constitution, 1921

(4) Article 13, Louisiana Civil Code

(5) Article 15, Louisiana Civil Code

(6) Article 16, Louisiana Civil Code

(7) Article 18, Louisiana Civil Code

(8) Article 21, Louisiana Civil Code

Again, thanking you for your courteous attention in these matters, I remain,

Very truly yours,
Samuel L. Lieber, M.D.
October 23, 1981

cc: Frank S. Kennedy, Rellis P. Godfrey, Attys, for Plaintiff-Appellant
J. L. Hargrove, Jr., J.L. Shea, Jr., Attys. for Defendant-Appellant

SAMUEL L. LIEBER

vs.

DURWARD RUST

SECOND CIRCUIT COURT OF APPEALS
CADDO PARISH, LOUISIANA

No. 14-249

REQUEST FOR:

1) Certification of specific question, and
2) Completion of interlocutory judgment

© Samuel L. Lieber, M.D., 1981

REQUEST DENIED —
Shreveport, La.
This 5th day of January, 1982.

O. E. Price
Chief Judge

FIRST JUDICIAL DISTRICT COURT
CADDO PARISH, LOUISIANA

Number 254,888

SAMUEL L. LIEBER

vs.

DURWARD RUST

OPINION ON RULE FOR PRELIMINARY INJUNCTION

Plaintiff, Samuel L. Lieber, and the defendant, Durward Rust, own adjoining properties that border on the shores of Cross Lake, in Caddo Parish, Louisiana. The defendant, Durward Rust, began the construction of a pier from his property out into the lake with a boat house to be located out in the lake at the very end of the pier. Plaintiff filed the instant suit seeking injunctions alleging that such construction is located as to interfere with and degrade his view of the lake as well as limit his access to the lake and degrade his property. Plaintiff further alleges that defendant has violated the subdivision building restrictions and applicable city ordinances.

No temporary restraining order was issued in this case. The matter was taken up for trial on the instant rule for a pleminary injunction on February 13, 1979, with several witnesses testifying on each side and the matter was continued for argument on February 20, 1979, on which date the arguments were had and the matter was submitted to the Court on briefs to be filed by plaintiff in 15 days and by defendant within 15 days thereafter.

The facts introduced show that plaintiff has access to the lake in spite of the location of defendant's construction, but the access and view from plaintiff's property is

not as desireable as would be the case if the construction were located elsewhere.

The "Declaration of Covenants, Conditions and Restrictions" that applies to the subdivision establishes an Architectural Control Committee in Article I thereof and further contains language that would require that plans for any construction on the properties in the subdivision be submitted to the Committee and be approved by it. Section 9 of said "Declaration of Covenants, Conditions and Restrictions" specifically states "Boat houses, fishing piers and other construction extending into Cross Lake shall be permitted to exist on, from, or connected to any lot with prior written approval of the Architectural Control Committee, subject however to full compliance with all ordinances and regulations of the City of Shreveport."

It is admitted by the defendant that he never submitted his plans for his pier and boat house to the Architectural Control Committee, or got its approval for the construction.

The "Declaration" contains restrictions for many specific uses, locations and distances that apply to the lots themselves, but the only standards set forth in the "Declaration" for the Architectural Control Committee to follow with reference to boat houses and piers was that the plans must be "—approved in writing as to harmony of external design and location in relation to surrounding structures and topography—."

It is my opinion that this language, since it stands alone without other specifics, is just too vague and ambiguous to be enforceable against the construction of boat houses and piers not located on the lots themselves. See *Lake Forest, Inc., et al v. Edward R. Drury, et al*, 352 So. 2d 305. Building restrictions are strictly construed in favor of free

use of immovable property.

The plaintiff next argues that the defendant did not comply with the Ordinances of the City of Shreveport because the pier was not built perpendicular to the water line as required, but the drawing in the record shows and it was admitted that the water line at this point is an irregular curve. No one can determine what "perpendicular" to the water line is.

Defendent did obtain a permit from the City of Shreveport authorizing the location of his pier before he began construction. The location was "staked" by an employee of the City of Shreveport, Mr. R. W. Calhoun, Superintendent of the Cross Lake Patrol, and the construction was located accordingly.

Plaintiff argues strenuously that this location was not in accordance with the "drawing" made by the City of Shreveport in that the actual location was at least 15 feet off; however, Mr. Weldon Thorne, an employee of the City, stated that the "drawing" referred to was made by him, was not a surveyed drawing, and was only to provide a general guide for Mr. Calhoun to use. The above facts provide no relief for plaintiff on his claim that the Ordinances of the City of Shreveport were violated, because no specific violation has been shown.

It should be noted that the drawing shows that the lots in this subdivision all border on the lake on what I call, for lack of a better description, an inside curve. Because of this fact and the length of the pier required due to yearly shallow water, each lot is necessarily required to suffer the reasonable inconvenience of the location of the other man's pier.

For the above reasons, plaintiff's rule for a preliminary injunction is denied at his cost.

April 17, 1979.

C. J. Bolin, Jr.
District Judge

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

NO. 13,907

On application of Samuel L. Lieber for writs of certiorari, prohibition and mandamus to the First Judicial District Court, in and for the Parish of Caddo, State of Louisiana, Hon. C. J. Bolin, Jr., Judge.

SAMUEL L. LIEBER
versus
DURWARD RUST

BEFORE BOLIN, PRICE AND JONES, JJ.

April 17, 1979.

WRITS DENIED.

The showing made does not warrant the exercise of our supervisory jurisdiction.

FIRST JUDICIAL DISTRICT COURT
CADDO PARISH, LOUISIANA

NUMBER 254,888

SAMUEL L. LIEBER
versus
DURWARD RUST

OPINION ON MERITS

The facts of this case are set forth in this Court's opinion of April 17, 1979, in which plaintiff's rule for a preliminary injunction was denied.

Each contention of the plaintiff was argued by plaintiff and ruled on by this Court in the above previous opinion. Although these matters were reargued on the merits by the plaintiff, and have been carefully considered by this Court, my opinion remains the same and there is no new issue presented to this Court. The factual matters alleged in plaintiff's motion to reopen the case, even if true, would not change the result or outcome of the case.

The demands of plaintiff are rejected at his cost.

August 1, 1979.

C. J. Bolin, Jr.
District Judge

FIRST JUDICIAL DISTRICT COURT
CADDO PARISH, LOUISIANA

No. 254,888

SAMUEL L. LIEBER
vs.
DURWARD RUST

JUDGMENT

This case was tried on April 17, 1979. Present at the trial were Frank S. Kennedy, counsel for plaintiff, and Joseph L. Shea, Jr., counsel for defendant. After the conclusion of the trial, the case was taken under advisement and counsel for plaintiff was ordered to submit a memorandum of authorities.

The Court now concluding that the law and the evidence are in favor of the defendant, for the reasons assigned in the written opinion of this Court filed in the record on August 1, 1979:

IT IS ORDERED, ADJUDGED and DECREED that there is judgment rendered in favor of the defendant, Durward Rust, and against the plaintiff, Samuel L. Lieber, denying all of plaintiff's demands including but not limited to plaintiff's demand for a preliminary injunction, plaintiff's demand for a permanent injunction perpetuating the preliminary injunction, plaintiff's demand for attorney's fees, and plaintiff's demand for a mandatory injunction, and it is further ordered, adjudged and decreed that there is judgment rendered in favor of the defendant, Durward Rust, and against the plaintiff, Samuel L. Lieber, for all costs of these proceedings.

JUDGMENT SIGNED in Chambers, in Shreveport, Caddo Parish, Louisiana, this 8th day of August, 1979.

C.J. Bolin, Jr., Judge
First Judicial District Court
Caddo Parish, Louisiana

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FIRST JUDICIAL DISTRICT COURT
CADDO PARISH, LOUISIANA

No. 254,888

SAMUEL L. LIEBER

vs.

DURWARD RUST

JUDGMENT OVERRULING MOTION FOR NEW TRIAL

This Motion was filed by plaintiff on May 25, 1979, and a hearing was held on June 4, 1979. Present at the hearing were Frank S. Kennedy, attorney for plaintiff, and Joseph L. Hargrove, Jr., attorney for defendant. After the conclusion of the hearing, the Court heard the arguments of counsel, and the Court concluded that the law and the evidence are in favor of the defendant, for the reasons orally assigned at said hearing of June 4, 1979, and, therefore,

IT IS ORDERED, ADJUDGED and DECREED that the Motion for New Trial filed by plaintiff is hereby overruled and judgment thereon is rendered in favor of the defendant, Durward Rust, and against the plaintiff, Samuel L. Lieber.

JUDGMENT signed in Shreveport, Caddo Parish, Louisiana, this 8th day of August, 1979.

C.J. Bolin, Jr., Judge
First Judicial District Court
Caddo Parish, Louisiana

FIRST JUDICIAL DISTRICT COURT
CADDO PARISH, LOUISIANA

No. 254,888

SAMUEL L. LIEBER

vs.

DURWARD RUST

OPINION ON PARTIAL NEW TRIAL

A partial new trial was granted in this case to allow plaintiff to introduce additional evidence.

Before discussing the evidence introduced, a partial restatement of the problems involved in this lawsuit is pertinent.

The plaintiff, Samuel L. Lieber, and the defendant, Durward Rust, own adjoining properties that border on the bed of Cross Lake, both properties being located on a concave or "inside curve" of the lake. Exhibit P-11 shows the property belonging to the parties and the defendant's "existing 4' walk-timber" and "existing location of proposed boathouse," which will be hereinafter referred to as "defendant's existing pier and pilings for the proposed boathouse."

The area of the concave or "inside curve" of the lake may be best seen in the aerial photo in evidence as plaintiff's Exhibit No. 16. Defendant's pre-existing pier and planned boathouse is in the center of the picture and plaintiff's lake frontage is marked in red just to the right thereof. Another pre-existing pier and boathouse is shown to the left of defendant's property.

The defendant previously obtained a permit from the City of Shreveport to build his pier and boathouse. See Exhibit D-4. Mr. R. W. Calhoun, Superintendent of the

Cross Lake Patrol of the City of Shreveport, had previously gotten drawings (not surveyed drawings) from the City Engineer's Office to help plan the location of the piers in the area. These drawings are Exhibit D-1, for the area of Willow Ridge Subdivision, Unit No. 2, which includes the area here in dispute; also, Exhibit D-2, which includes the area of Lot 2 of Willow Ridge Subdivision, Unit No. 3, to which is attached the pre-existing pier and boathouse which is shown to the left of plaintiff's property in the aerial photo, Exhibit P-16, previously mentioned.

Mr. Calhoun then went to the property and drove stakes to locate the pier and boathouse. Defendant then built the pier and installed the piling for the proposed boathouse according to the staked location. At this point plaintiff filed the instant suit seeking an injunction to prevent the completion of the boathouse and a mandatory injunction to remove the existing pier.

The plaintiff, Samuel L. Lieber, testified that he would be denied the scenic view and the full use of the lake bottom "in front" of his property in times of low water (beach rights). In addition, plaintiff introduced a picture of a scene with a beautiful cypress tree in the foreground (Exhibit P-10) and testified that the beautiful view, including the tree, was one of his considerations in buying his lot and he has been damaged by not having a proper view of the tree.

It is the considered opinion of the Court that the other evidence in this case demonstrates that this tree, shown in Exhibit P-10, is not "in front" of plaintiff's property, but is "in front" of defendant's property. It is marked with an arrow on Exhibit P-4A. It may also be seen in Exhibits P-5, P-7B and P-8. The tree would be "in front" of defendant's property under any reasonable theory of what constitutes "in front" of defendant's property.

The Court has been cited the law of other states on this point which is set forth in Corpus Juris Secundum, Navigable Waters, Section 61, Volume 65, Page 213, which states:

> "The right of a *reasonably unobstructed* view over the water has been recognized; but it has also been held that a riparian owner has no more proprietary right in a beautiful scene presented by a river than *any other owner of land* can claim to a beautiful landscape." (Italic supplied).

It should be noted that the above law of other states only gives a "right to a reasonably unobstructed view —" and no more than "any other owner of land."

No Louisiana statute or Louisiana case has been cited to this Court by the parties that has *upheld* the issuance of an injunction to protect a right to a scenic view. Such a statement is not made to criticize the attorneys for the parties in this case, but only to emphasize the difficulty with the legal issues here involved.

On the other hand, after considerable effort the only Louisiana case that this Court has been able to locate that dealt with the problem at all was *James D. Haynes, Jr., et al v. Jerry L. Smith*, 85 So. 2d 326, at page 331. This case stated that plaintiffs set forth *no* grounds for relief in seeking to enjoin the construction of a boathouse on Cross Lake (measuring 133 feet by 38 feet) on several contentions including the contention that it would obstruct the view, "—because they present no foundation nor justification for relief either in *law* or fact." (Italic supplied). In stating, in part, that plaintiff in the above cited case has set forth no foundation or justification for relief "—in law—", the Second Circuit Court of Appeal of the State of Louisiana has laid down a rule of law that this

Court is required to follow when considering the facts of the instant case.

Plaintiff presented the testimony of Mr. Calhoun Allen, former mayor of the City of Shreveport, who testified as to the purpose and intent of the City Council in passing Ordinance No. 40 of 1964. Mr. Allen testified that the purpose was, by the issuance of permits for construction of piers and boathouses below the 172-foot contour line (the bed of Cross Lake), to provide for an equitable location of such construction between neighboring landowners whose property bordered on the 172-foot contour line of the lake. This purpose was in addition to the numerous purposes actually listed in the first portion of the ordinance.

He further testified that the location of defendant's existing pier and pilings for the proposed boathouse would violate the intent and purpose of the ordinance; that the ordinance was to prevent the situation as shown on Exhibit P-11; that is, that defendant's existing pier and pilings for the proposed boathouse extend "in front" of plaintiff's property. In addition, he testified that plaintiff would be prevented from using the lake bottom "in front" of his property at low water in accordance with the ordinance. He further testified that the intention was that piers would be built perpendicular to the 172-foot contour line, but admitted on cross-examination that permits had been issued to build piers that were not perpendicular to the 172-foot contour line because, to do otherwise was not always practical.

Mr. Joe Leslie, former head of the City of Shreveport Cross Lake Patrol, likewise testified that the location of defendant's existing pier and pilings for the proposed boathouse would violate the ordinance.

Ordinance No. 40 of 1964 states, in part, as follows

concerning the right of property owners adjacent to Cross Lake to use the portion of the dry lake bed that abuts their property which was referred to by plaintiff, Samuel L. Lieber, and former Mayor Calhoun Allen:

> "The property owners adjacent to Cross Lake shall have the exclusive right to the use of the area which abuts their property and lies between the 172 foot contour line and the water level of Cross Lake, providing that all rules and regulations, restrictions and reservations, including waiver of any claims against the City of Shreveport, Louisiana for injuries or damages, are agreed to by said property owners."

The plaintiff, Mr. Calhoun Allen and Mr. Joe Leslie, all considered the property "in front" of plaintiff's property (or abuts their property) to be that part of the dry lake bed between the 172-foot contour lines, an extension of plaintiff's interior property lines and the water line.

No Louisiana statute or Louisiana case has been cited by the parties that *upholds* plaintiff's contentions on this point. Again, this statement is not made to criticize the attorneys for the parties, but only to emphasize the difficulty with the legal issue here involved.

On the other hand, the only theory that has been cited to the Court or that the Court has been able to find that would appear to be appropriate *to apportion* the beach rights between the parties in this case is a frontage to frontage formula such as that used in apportioning the ownership of alluvion that is deposited by accretion to property adjoining a navigable stream. The application of such a rule would appear to reach an equitable result considering the complexities of the problems here involved.

A total apportionment of the rights of each landowner

located on this concave or "inside curve" of the lake is not possible under the present posture of this lawsuit; however, since the Court is now dealing with the use of a portion of the bed of the lake during dry weather, the application of a portion of the same rules would appear to be helpful to *only* determine if an injunction should issue.

The following has been cited to me by plaintiff concerning the above formula from *Corpus Juris Secundum, Navigable Waters, Section 77, Volume 65, Page 248:*

> "If the general course of the shore line is not straight or parallel to the line of navigation, or if it is curved either outwardly or inwardly, the location of the dividing line between adjoining owners is governed by equitable considerations, each owner being entitled to an equitable proportion of the tide flats giving him access to deep water without obstructing the equal rights of others, and the general rule in such cases is that *frontage on navigable water is proportionate to the extent of shore frontage.*" (Italic supplied)

In the State of Louisiana the rule is consistent with that of other states on this point. In apportioning the alluvion formed in front of the estates of riparian owners by the frontage to frontage formula (1) each owner should receive a fair proportion of the area of the alluvion, and (2) each should receive a fair proportion of the new frontage on the water. In cases where the frontage to frontage method is used each proprietor of the original tracts of land takes a quantity of alluvion that may be between the lines of his old frontage on the water course forward to the new frontage and the lines by which the new frontage is reached may be "— parallel, or convergent or divergent.—" See *Olivero v. Milliken & Farwell, Inc.*, 361 So. 2d 1248 at page 1250, and the map at page 1253. Note on

page 1253 the angle between the old and the new property lines within "Solitude Point," belonging to Ashland Plantation, Inc., Mrs. Ima Mae Morris and Devall Planting Company, Inc.

The Course of the interior side lines of the property in front of which alluvion has formed is of no consequence in the division of the alluvion and this has been the law in Louisiana since *1856*. See *Heirs of Delford v. City of New Orleans*, 11 La. Ann. 699 (1856).

The plat in evidence attached to plaintiff's original petition, plaintiff's Exhibits P-4, P-5, P-6, P-7A, P-7B, P-8, and P-9 all show a part of the existing pier and the pilings for the proposed boathouse inside the area of the extended interior lot lines of plaintiff's property, but this evidence is considered as not controlling in applying the frontage to frontage formula or to the decision that the Court must make as to issuance of the injunction.

Plaintiff also strongly argues that the ordinance has been violated because defendant's existing pier was not built perpendicular to the 172-foot contour line.

Ordinance No. 40 of 1964 states as follows:

> "Piers and wharves, stationary and/or floating, and other facilities extending into the Cross Lake reservoir will be limited to a maximum total length of not more than 300 feet, perpendicular to the water line, from the 172-foot contour line."

The above quoted language is ambiguous and the testimony of ex-Mayor Calhoun Allen is admissible to determine the intent of the ordinance, but his testimony did not clear up the ambiguity because he testified that it was not applied in situations when it would not be reasonable to do so. The Court has already noted previ-

ously that the 172-foot contour line of defendant's property is not straight and has an angle in it. Which side of the angle would the ordinance require that the pier run perpendicular to? Even the plan proposed by plaintiff, Exhibit P-15, does not require all piers to run perpendicular to the 172-foot contour line.

The evidence shows that defendant's property fronts on the lake and the 172-foot contour line has an angle in it and is not straight. The survey does not show the angle of this existing pier to either side of the angle of the 172-foot contour line of defendant's property; however, it appears from observation of the plat that the existing pier is about on a course which runs perpendicular to a straight line drawn between the extremities of plaintiff's property where said extremities border on the 172-foot contour line. This location likewise seems to be reasonable when the entire picture of the area is considered.

It is my considered opinion that when the entire area is considered by this aerial photo rather than the single picture of the location of plaintiff's property as judged by the interior lot lines, the solution proposed and put into practice by the City of Shreveport seems reasonable, or at least as reasonable as the plan submitted by plaintiff at P-15.

For the above reasons plaintiff's petition for an injunction is denied.

Shreveport, Louisiana, December 7, 1979.

C. J. Bolin, Jr.
District Judge

FIRST JUDICIAL DISTRICT COURT
CADDO PARISH, LOUISIANA

No. 254,888

SAMUEL L. LIEBER

vs.

DURWARD RUST

JUDGMENT

This case was tried on the merits on April 17, 1979. Present at the trial were Frank S. Kennedy, counsel for plaintiff, and Joseph L. Shea, Jr., counsel for defendant. After the conclusion of the trial, the case was taken under advisement and counsel for plaintiff was ordered to submit a memorandum of authorities.

This Court also granted a Partial New Trial in this matter and the Partial New Trial was tried on September 14, 1979. Present at the Partial New Trial were Frank S. Kennedy, counsel for plaintiff, and Michael R. Mangham and Joseph L. Shea, Jr., counsel for defendant. After the conclusion of the Partial New Trial, the case was again taken under advisement and counsel for both sides were ordered to submit memoranda of authorities.

The Court now concluding that the law and the evidence are in favor of the defendant, for the reasons assigned in the written opinion of this Court filed in the record on August 1, 1979, as to the merits, and for the reasons assigned in the written opinion of this Court filed in the record on December 7, 1979, as to the Partial New Trial;

IT IS ORDERED, ADJUDGED and DECREED that there is judgment rendered in favor of the defendant, Durward Rust, and against the plaintiff, Samuel L. Lieber, denying all of plaintiff's demands including but not limited

to plaintiff's demand for a preliminary injunction, plaintiff's demand for a permanent injunction perpetuating the preliminary injunction, plaintiff's demand for attorney's fees, and plaintiff's demand for a mandatory injunction, and it is further ordered, adjudged and decreed that there is judgment rendered in favor of the defendant, Durward Rust, and against the plaintiff, Samuel L. Lieber, for all costs of these proceedings.

JUDGMENT SIGNED in Chambers, in Shreveport, Caddo Parish, Louisiana, this 2d day of January, 1980.

C.J. Bolin, Jr., Judge
First Judicial District Court
Caddo Parish, Louisiana

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PRAYER FOR WRIT TO VACATE JUDGMENT, OR, IF ILLEGAL, THEN — PRAYER FOR WRITS OF PROHIBITION, MANDAMUS, ERROR AND CERTIORARI

Petitioner shows that no appeal lies from the court order involving this case, leaving this citizen without relief except that to be gained through these writs!

Petitioner maintains that prescription cannot run against unconstitutional acts of judges, and maintains that Writ authority relates to at least the following:

1. Louisiana Constitution of 1974, Art. 5, Section 2. — Habeas Corpus, Needful Writs, Orders and Process; Contempt
   A judge may issue writs of habeas corpus and all other needful writs, orders, and process in aid of the jurisdiction of his court. Exercise of this authority by a judge of the supreme court or of a court of appeal is subject to review by the whole court. The power to punish for contempt of court shall be limited by law.

2. Louisiana Code of Civil Procedure
   Courts — Chapter 4 Power and Authority
   Article 191, page 137 — Inherent judicial power
   A court possesses inherently all of the power necessary for the exercise of its jurisdiction even though not granted expressly by law.

3. Louisiana Code of Criminal Procedure
   Article 17, page 22
   Inherent power and authority of courts
   A court possesses inherently all powers necessary for the exercise of its jurisdiction and the enforcement of its lawful orders, including authority to issue such writs and orders as may be necessary or proper in aid of its jurisdiction...

4. Prohibition — CJS 73
   Section 11h — Proceedings under Unconstitutional or Invalid Statutes or Ordinances
   Section 11j — Particular Application of Rules
   (1) Civil action generally — where a court acts without or in excess of jurisdiction or authority.

Opening remarks:

Petitioner realizes the complications involved in solving various judicial errors at each and every level of the State Judiciary in his case.

Relator requests that the Supreme Court accept this request for writs.

Thereafter, Relator requests that the Supreme Court *not* act unless:

1. Appeal Court refuses to complete a vote on whether or not to allow Rehearing, or if
2. Appeal Court has completed a vote on whether or not to allow rehearing, and if Appeal Court has majority vote *against* rehearing!

At such time, Relator requests that Supreme Court have certified up by Writ of Certiorari through its plenary supervisory jurisdiction the pending case of SLL vs City of Shreveport, First Judicial District Court No. 261,967.

If, at that time, the Supreme Court has answered the previously certified question from the Appeal Court, regarding solely and specifically defining Shreveport Ordinance 40 1964 (through plain meaning, syntax, and/or legislative intent) Relator requests Supreme Court to remit the same answer to the First Judicial District Court, relating to the above pending case between SLL and the City of Shreveport!

Thereafter, in order to expedite the process while achieving JUSTICE, Relator, with all due respect, recom-

mends that the Supreme Court act at the highest level, so that lower level actions, not eventuating, would not allow potential for greater costs in time and funds, as long as the Supreme Court feels that it is not depriving the Defendant one's proper right!

Relator, thus, requests the Supreme Court not to issue such Writ as to force District Court action; *not* to issue such Writ as to force Appeal Court action; rather, to issue such writs to *itself* as to force its own action to correct that judicial error precipitated by the actions of Judge Watson, agreed in by all other judges of the Supreme Court, but not without that doubt cast by Judges Dixon and Blanche, who desired Rehearing!

Thus, Relator requests Writs to force the Supreme Court, itself, to:

1. Use extant civil code — not extinct;
2. Apply a nondiscretionary law appropriately, forcing construction of a pier only at a 90° angle from the water-line of the reservoir in question (official 172 ft. contour line)!

SUPREME COURT WRITS TO DISTRICT COURT

Petitioner requests that the Supreme Court Judge issue writs relating to the District Court Judge's failure to order the proper city action immediately after said Judge accepted legislative intent!

SUPREME COURT WRITS TO APPEAL COURT

Plaintiff requests proper writs requiring Appeal Court Judges to accept legislative intent as was accepted by the

Judge of the District Court, or else give legal reason, lawful reason, why this cannot be done by such judges!

Appeal Court judges also should be presented with writs of mandamus and prohibition, forcing them to maintain their opinions within the limits of the law, so that reasoning would have to come from related jurisprudence (if any jurisprudence at all), and not from cases which are irrelevant (as shown by Judge Price in his arguments relating to request for rehearing)!

SUPREME COURT WRITS TO ITSELF

Petitioner requests that the Supreme Court, in developing this writ, maintain that any Supreme Court Judge responsible for opinion in this case prove his reasoning by constitutional acts and not by unconstitutional acts (those acts of 1977 that were used being illegal); also that such Judge understand that one must apply THE LAW (non-discretionary), where exact (precise) terms are utilized, so that the 66° extension, would have to be changed (precisely) to become a 90° extension! (To act otherwise is legal fraud — and — malpractice).

WRIT OF ERROR (CORAM NOBIS)

Court was not asked to determine the significance of the angle of pier placement — only to apply the law! If the Court holds that 66° instead of 90° is of too little significance for the Court to consider this to be against the law! — then — God help us all!! This thinking with overt refusal to obtain definitions — could not be considered ignorant — rather, unconscionable — utterly intolerable for The People to allow a judge to act thus, and not wisely!

Further, since the Supreme Court (Watson) has inferred that THE LAW *means 90°* (perpendicular) —

assuming this to be applied — it proves that the District Court Judge (Bolin) was correct in accepting the intent of the law as historically outlined by one of its authors and proves that this is a mistrial (abortion of justice), and *must* be corrected by simply referring the problem back to the City Authority to implement by maintaining pier extention perpendicular (90°) to the 172 ft. contour line!!

"De Minimus," used by the Supreme Court Judge (Watson) to "allow" his ignoring of The Law is an act of overt malpractice — malfeasance? — misfeasance? — nonfeasance?! —

THE FACTS REMAIN:

1. The law uses the term "perpendicular," which signifies an angle strictly at 90° — no more — no less!
2. The intent of The Law is to prevent obstruction of view and passage to adjoining neighboring properties (riparian rights granted by the United States Government to citizens through the State Governments)!

To permit otherwise is arbitrary, capricious, dictatorial in the totalitarian sense and INTOLERABLE TO ALL GOOD CITIZENS!

It does become obvious (crystalline clear) that The Will of The People (The Law) mandates that piers extend 90°, and only at 90°, from the 172 ft. contour line! This has been -- is — an Act Of the Sovereign Will Of The People — and constitutes The Law!

Contrariwise, the decision of the Courts is a judicial act* — at most a decree — and in this instance, is gross and abusive erroneous interpretation of The People's Law — as so detailed in accompanying data.

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*J.J. Rousseau: The Social Contract, Chapt. 2

COMMENTS ON THE WISE APPLICATION OF KNOWLEDGE

As one's society sophisticates, oneself, likewise, must become more sophisticated, of course, by proper learning from proper instruction. This process of increasing the complexity of a culture forces each member to become dumber (more ignorant) of virtually all data except within one's sole "job frame." Thus, an electrician becomes more skilled in his craft, yet cannot carpenter well, or cook well, or doctor well, etc. — unless such electrician has bettered himself in such another field as a hobby or a second vocation.

Thus it is with doctors, architects, engineers, lawyers, etc., and, when specialization occurs, each becomes smarter in said subject, yet dumber generally. And the lawyer, specializing as judge, should become wiser in the law, yet remain dumb in other knowledge.

In court, it is the job (duty) of opposing lawyers to educate (teach) the judge on applicable law, and, if necessary, have specialists in applicable fields also instruct the judge, as expert witnesses relating to solving presented problems in a particular case.

The judge must master such data — then apply same within the limits of our laws, and the judge must be totally knowledgeable of all of our laws relating to the art and science of judging! If not, then such judge is not a specialist, really, and is also dumb in that field of knowledge in which he is considered to be a specialist, and in which he is a worker for The People! And for one as judge to *not* know the rules of judging is intolerable for The People to allow! And perchance a judge discovers his ignorance in his chosen field, he is obligated to The People — through Their Law itself, to educate himself

forthwith — else suffer grievous losses!

A judge MUST understand The Law!

A judge MUST understand the Code of Judicial Conduct!

A judge MUST understand The Canons of Judicial Ethics!

A judge MUST understand that all of these above ideas are his official rules and regulations — LAW — through which he must toil and live!

Each of us must learn more about less in our culture — else our culture be lost by default. And each of us who is found to be failing must be re-instructed — corrected — else he crash to the ground, and bring us all down with him!

As stated in Brief #1

This contest relates to two ideational universes relating to the problem. Each group has cast the die:

> For myself, I shall continue to plead my cause as wisely as is within me to so do! — for I believe, and only after most careful study, that my position is legal and ethical.
>
> Contrarily, each judge (voted into authority), either through ignorance, or refusal to carefully study, or covert or overt animosity (at this point) has cast his die and insists upon continuing in a role of "The Ultimate Authority," in spite of logical proofs of blameworthy insistence of continuing gross and callous Abuse of The Law of The Land!

All that is expected is simple answering of each propounded question by the aggrieved victim of this simple and minor mistake of City Authorities, exploded into

nuclear explosive proportions by the Courts' denial of Citizens' rights! — acts that hurl our wonderful country closer and closer toward totalitarian rule — closer and closer to anarchy!

But These Good Men must feel that they have passed the point of no return, and probably feel, as noted previously, that loss of face, to say the least, prevents honest reply, and admission to error, and attempts to rectify that wrong that they presently do!

I fear that, perhaps totally good in other actions, they are "failing the course" in this one instance, yet insisting that they are passing — also making an "A" to boot!

BRIEF TO THE LOUISIANA JUDICIARY COMMISSION

CATECHISM

DISTRICT COURT

1. Did Judge Bolin accept original custom? —No
2. Did Judge Bolin accept simple meaning? —No
3. Did Judge Bolin apply syntax? —No
4. Did Judge Bolin accept legislative intent? —Yes
5. Did Judge Bolin, in his final Opinion, ask himself a question, the answer to which would have solved the problem? —Yes
6. Did Judge Bolin then refer problem to the City Executive to use 90° from the contour line? —No
7. Is this malfeasance and/or nonfeasance (malpractice — whether by mistake or deliberate)? —Yes

APPEAL COURT

1. Did Judge Jones accept original custom? —No
2. Did Judge Jones accept illegal custom? —Yes
3. Did Judge Jones apply simple meaning? —No
4. Did Judge Jones apply syntax? —No
5. Did Judge Jones accept legislative intent? —No
6. Did Judge Jones accept legislative history which was given by legislative author and original executive authority of the ordinance in question, as is mandated by law? —No

7. Did Judge Jones apply said Ordinance? —No
8. Did Judge Jones, when cautioned by Judge Price, accept Judge Price's statement that he (Judge Jones) had used the wrong case referral, and then allow a rehearing to correct his own error? —No
9. Did Judge Jones consider mistrial? —No
10. Did Judge Jones consider his own bias as well as that of Judge Bolin in the District Court? —No
11. Is this malfeasance and/or nonfeasance (malpractice — whether by mistake or deliberate)? —Yes

SUPREME COURT

1. Did Judge Watson accept simple meaning? —No
2. Did Judge Watson apply syntax? —No
3. Did Judge Watson accept legislative intent? —No
4. Did Judge Watson accept legislative history which was given by legislative author and original executive authority of the ordinance in question, as is mandated by law? —No
5. Did Judge Watson apply said Ordinance? —No
6. Did Judge Watson consider mistrial? —No
7. Did Judge Watson consider his own bias as well as that of Judge Bolin in the District Court, and of Judge Jones in the Appeal Court? —No
8. Did Judge Watson reason *logically* from Articles of The Law in the extant Louisiana State Constitution? —No

9. Rather, did Judge Watson reason *illogically*, and with obvious bias — obvious malice — by reasoning from the *extinct* Articles of The Law from the prior Constitution, which specific Articles he openly — blatantly — stated where those Articles "prior to its 1977 amendment."? —Yes

10. Did Judge Watson, after being cautioned by my attorneys' Brief for Rehearing, as well as by my personal Brief for Rehearing, as well as by the request by Chief Justice Dixon and Justice Blanche, realize his willful refusal to apply the pertinent Statute as being nonfeasance — malfeasance — malpractice — and vote for Rehearing?! —No

11. Did Judge Watson apply said Ordinance? —No

RES IPSA LOQUITOR

CATECHISM

FOR THE JUDICIARY COMMISSION

The Judiciary Commission, Rule 23, Section 3.

1. Are these complaints obviously unfounded or frivolous? —No

2. Are facts alleged indicating judge/s guilty of willful misconduct relating to official duty? —Yes

3. Or willful and persistent failure to perform duty, —Yes

4. or persistent and public conduct prejudicial to the administration of justice that brings the judicial office into disrepute? —Yes

Canons of Judicial Ethics, Revised Statutes, Vol. 8, p. 373 – Canon No. 3

5. Is judge here supporting and defending the Constitution of the United States and the Constitution of Louisiana — and fearlessly observing and applying fundamental limitation and guarantee? —No

6. Is judge here applying a general law to a particular instance? —No

7. Is judge here violating his duty as a minister of justice by seeking to do what he may personally regard as substantial justice while disregarding the general law as he knows it to be binding on him? —Yes

8. Is judge here administering the office with a due regard to the integrity of the system of the law itself, —No

9. —or as a depositary of arbitrary power? —Yes

Code of Judicial Conduct, Louisiana Rules of Court, 1981

10. Canon 2 — Is judge complying with the law? —No

11. Canon 3 — Is judge faithful to the law? —No

Louisiana State Constitution of 1912, p. 35, Art. 4;
Louisiana State Constitution of 1921, p. 589, Art. 7

12. Did judge refer to the particular law and adduce the reasons on which the judgement is founded? —No

Louisiana State Constitution of 1921, Art. 9

13. Can judge be removed "—for willful misconduct relating to his official duty or willful and persistent failure to perform his duty?" —Yes

CATECHISM

Nonfeasance: "The total omission or failure of an agent to enter upon the performance of some distinct duty or understanding which he has agreed with his principal to do." — the "substantial failure to perform a duty, or, in other words, the neglect or refusal, without sufficient excuse, to do that which it is an officer's legal duty to do."

Misfeasance: The improper, wrongful, or injurious doing of an act that one might lawfully do.

Malfeasance: The doing of an act that is wholly wrongful and unlawful; any wrongful conduct which affects, interrupts, or interferes with the performance of official duty.

Judge Bolin:

—use of alluvion law —misfeasance?
—use of Haynes-Smith —misfeasance?
—not applying the statute —nonfeasance?
—not interpreting the statute —misfeasance?
—attempting to apply equity instead of the available law —malfeasance?

Judge Jones:
—not applying the statute —nonfeasance?
—not interpreting the statute —misfeasance?
—attempting to apply equity rather than the proper law —malfeasance?
—refusing Allen's history of legislative intent —misfeasance?

Appeal Court:
—refusal of rehearing —nonfeasance?

Judge Watson:
—refusal to apply restrictive covenants —malfeasance?
—refusal to apply statute —nonfeasance?
—refusal to use extant law —misfeasance?

Supreme Court:
—refusal of rehearing —nonfeasance?

Grave problems not addressed yet presented.

Charges:

1. Manifest refusal of protection of right of due process
2. Manifest refusal of protection of riparian rights
3. Manifest refusal of protection of rights of use of public highway as demanded in Proviso for acceptance of Louisiana as a State in 1803.
4. Manifest refusal of obligation to apply a general law to a specific case after proper study.
5. Manifest refusal to apply present constitutional law to present problem, attempting to utilize unconstitutional data rendered so by constitutional change prior to institution of suit.

Refusal of Duty (State of Louisiana Revised Statutes, Vol. 8, Pg. 373):

1. Application of general law to particular instances.
2. Action personally considered as substantial justice and disregarding the general law as he knows it to be binding on him.
3. Action that may become a precedent unsettling accepted principle and may have detrimental consequences beyond the immediate controversy.
4. Not a depositary of arbitrary power, but a judge under the sanction of the law.

CRITIQUE TO LOUISIANA JUDICIARY COMMISSION: OF RELATING LOUISIANA CIVIL CODE ARTICLES TO THIS PROBLEM

Louisiana Civil Code — Preliminary title — of the General Definitions of Law and the Promulgation of the Laws — Chapter I: OF LAW

Art. 1. Law is a solemn expression of legislative will.

Please note the use of the term "legislative," certainly not to be considered any other branch of our wonderful government — neither executive *nor* judicial! Study of the civil code shows that it is THE PEOPLE, through their legislature, who define and proclaim our laws! It is to be noted that the intent of the law relates to specific wording of said law, and, as noted below, such intent cannot be changed by judicial whim (personal desire on the part of a judge), but must be related to the problem in the Court at the time, and applied as rigidly — as specifically, as possible, if understood in its plain context. If confusing, the judge is obligated to utilize syntax in order to explain the meaning of the law. If still confused, the jurist is obligated to research and determine specific legislative intent! Beyond this, the judge shall not pass! (please refer to Art. 21)!!

Art. 2. It orders and permits and forbids, it announces rewards and punishments, its provisions generally relate not to solitary or singular cases, but to what passes in the ordinary course of affairs.

Note that THE LAW "orders"! This means that THE PEOPLE, including the Judge, are told, specifically, what to do! Next, note that THE LAW "permits"! This means that THE PEOPLE through their LEGISLATURE see fit to allow each and every citizen

privileges that must remain within the limits of the universe of THE LAW! Next, note that it "forbids," thus showing that THE PEOPLE prevent certain actions — of course — in order to maintain — in order to sustain, our culture (society)! Next, it is to be noted, naturally, that the common knowledge of the principles of pain and pleasure relate to the statement that THE LAW permits good to those who live within the limits of regulation, and bad (punishment) to those who break such regulations!

Next, it is shown that THE LAW provides a general idea, which is related to desires of the majority of citizens, which ideas, quite rigidly and quite specifically, must now be related to the problem now presented to any court! (It should be understood that, as noted in Art. 21, if a law does *not* exist for a particular problem, then, and only then, the judge is allowed to apply his studied (?) wisdom (?) to said specific problem! However, and it is vital for each of you to understand this — if a law is applicable, it be utilized by the judge! Otherwise *he breaks the law*, which is, simply, *unconstitutional*!

Art. 3. Customs result from a long series of actions constantly repeated, which have by such repetition, and by uninterrupted acquiescence, acquired the force of a tacit and common consent.

Note that customs relate to a repeated act, which is allowed, and which proceeds without interruptio! Thus, there is — "acquired the force of a tacit and common consent." Here, note (see below) that illegal custom *cannot* hold, in spite of the possibility that something has been done customarily, if it is shown that it "breaks the law"; it simply cannot be allowed in any circumstance that is before the Court!

Art. 13. When a law is clear and free from all ambiguity, the letter of it is not to be disregarded, under the pretext of pursuing its spirit.

I feel that this law is quite clear and free from all ambiguity, as noted in enclosed data! Perpendicular means just what it says and nothing else! These judges cannot possibly be suggesting that each of them is "pursuing its spirit," inasmuch as each of these judges has refused to apply the simple wording of the law!

Art. 14. The words of a law are generally to be understood in their most usual signification, without attending so much to the niceties of grammer rules as to the general and popular use of the words.

This article is included, certainly not to "excuse" any action of these judges, but to show that even, at the least, "the general and popular use of the words" must be applied. — What is the general, much less popular, use of the word — "perpendicular?"!!

Art. 15. Terms of art or technical terms and phrases, are to be interpreted according to their received meaning and acceptation with the learned in the art, trade or profession to which they refer.

This should be considered self-explanatory! However inasmuch as judges from the District Court, Appeal Court and Supreme Court *have refused to act constitutionally*, let me fortify your understanding of this Article by relating that, if you do not understand any word, you are obligated to determine its true definition, and you are obligated to understand what it means within its statement by seeking help from professionals! This might mean seeking help from teachers of English, teachers of Mathematics, teach-

ers of Engineering, etc.!

Art. 16. Where the words of a law are dubious, their meaning may be sought by examining the context with which the ambiguous words, phrases and sentences may be compared, in order to ascertain their true meaning.

This concerns itself with the term "syntax."

Art. 18. The universal and most effectual way of discovering the true meaning of a law, when its expressions are dubious, is by considering the reason and spirit of it, or the cause which induced the legislature to enact it.

Our laws, finally, and in the end — that is, as a last resort — if any particular law is felt to be confusing — ambiguous — must finally be studied by *research*, determining *the reasons why our representatives have enacted it* — by determining the spirit within which any law was developed in the past! This concerns itself with the term "intent"! In this instance, the district court judge accepted the intent as stated by the only living legislator instrumental in the development and use of this law (past Commissioner of Public Utilities and recent past Mayor of the City of Shreveport!). This witness, *with sworn testimony*, known to be a "good citizen," gave the judge the history of this ordinance, specifying precisely that it was developed in order to "prevent" what has been done in this case (construction of piers *off* perpendicular, allowing gross abuse of other citizens' rights)! *At that point, the district court judge was obligated to stop the trial*, and to refer the problem back to the executive department of the city, which would then be obligated to carry out the ordinance, specificially relating to the intent shown by the above noted sworn testimony! *This he did not allow! This jurist's action is unconsti-*

tutional!

Next, the Court of Appeal judge, tragically, unconstitutionally, entrapped himself as did the original jurist, maintaining ambiguity of the law! Not only did he falter and fail in every way that the original jurist had, he, additionally, gravely and fatally erred in excusing his actions by claiming that "custom" was such as to allow what had happened! It must be noted, however, and tragically, that this judge, knowingly totally ignored original custom, and skipped the first years of the use of this ordinance, going to "new custom" (?) — which is unconstitutional, even though testimony revealed that this was the first time that group pier planning was undertaken (in order to get everybody to deep water — which is not concerned in this law). Also, we note that, although the original law was broken at times, when the original commissioner allowed construction of piers off perpendicular (*but only with mutual consent of involved parties*) it must be understood by you that in spite of the fact that the law was broken from time to time, *the law yet stands, and the law must be applied when its application is sought in Court!* It is almost entrancing to perceive the erroneous thinking of the judge when he thinks about past cases wherein it is mentioned that judges can determine intent of an ambiguous law by having legislators testify to the history of the law in its formation in both the senate and house, although, obviously, the City did not have two branches of the legislative part of our government, rather a single branch (which history was quite adequately given by the author of the law!)!! — Thus, local legislative action could not be considered valid!???

Art. 21. In all civil matters, where there is no express

law, the judge is bound to proceed and decide according to equity. To decide equitably, an appeal is to be made to natural law and reason, or received usages, where positive law is silent.

> Again, with redundancy it is to be exclaimed that *herein there is a specific, and express law, so that no judge is allowed to simply maintain an opinion that he feels is best from his own personal view! Rather, must the judge apply the opinion of THE PEOPLE, as expressed in THE LAW, which has been propounded by proper representation*! Not only that, Article 21 shows that in order to decide equitably — "an appeal is to be made to natural law and reason, or received usages,—"! None of these judges has considered true natural law, much less reason, much less received usages, if one understands that the same rewards and punishments will have to apply to each and every abutting lake property owner relating to pier construction and use of riparian rights (those exclusive rights given by the local ordinance, relating the dominant estate to the servient!!).

Note well: It should matter not, or at least minimally, what each of you might think of these words, much less of their author — whether I be black, white, pink, or green — whether I be Christian, Jew, Humanist, Mohammedan, Buddhist — whether I be Democrat or Republican,—!

> *You people are responsible to determine one thing, and to determine only one thing* — whether or not the judge has broken THE LAW! You must relate THE LAW to ETHICS — to MORALS — laws possessing their own ethics — their own morality — THEIR OWN EQUITY!! (If the people find a law to be inequitable, *they* are to change the law! Until then, *THE LAW STANDS!*)!!

THE JUDGE

A good citizen!

A human! Therefore, imperfect!

Well-educated, with a law degree; hopefully, also, with continuing *formal* education!?!

Usually *trying* to judge equitably!?!

Usually *judging* equitably!?!

Certainly not always right! — according to adversaries (friend and foe) — parent, sibling, spouse, children, superiors, peers, and —*OTHER GOOD CITIZENS!!!*

MOTIVATION—! Abuse of discretion! Manifest error! Malpractice!

INDICT

Definition: To pronounce as reproachable, ill-advised, wrong, evil, guilty, reprehensible, blamable, blameworthy, censorable, culpable.

THE INDICTMENT

Relates to faults in the finest legal system extant!

Relates to faults in those mandated to judgeships!

Relates to faults in those laws used by those mandated to judgeships!

JUDGE: CORNELIUS J. BOLIN, JR.

FIRST JUDICIAL DISTRICT COURT
CADDO PARISH, STATE OF LOUISIANA

No. 245-888

After being formally cautioned regarding abuse of discretion, as well as manifest error, (Brief #1, 1979) he refused to define the law syntactically; thereafter, refused to accept the testimony of a legislator relating to the history of the law, in order to determine said law's intent; thereafter, refused to permit the executive department of his local government to finalize such conclusions! Rather, did he steadfastly, and with malice (why else, as he is knowledgeable of law!), *insist* upon ambiguity of the meaning of the law — having the effrontery (shameless boldness) to ask an easily answerable question that would have solved the case — then leave it unanswered! (Opinion of Partial New Trial, p.8)!

This man has a law degree. He *must* perform adequately usually, yet errs, and has had decisions reversed by higher courts. But present behavior is reckless — and dangerous to the hard-earned privileges of the citizen, and must not be allowed to continue! He has denied his sworn obligation, and is fully understanding of his acts (after my *two* personal briefs)!

Exactly what mechanisms exist for complaints, if the District Court Jurist has erred in his Opinion on a New Trial?

Apparently the only mechanism is to confront *not* this Jurist, but a Jurist at the Appeal Court level!

Why?

Particularly when, *in his opinion*, this Jurist has asked a question, the answer to which solves the problem?!

This is social psychosis — an affront to reason! Totally illogical!

JUDGES:
JASPER E. JONES, and FRED W. JONES, JR.

COURT OF APPEALS, 2nd CIRCUIT
STATE OF LOUISIANA

No. 14,249

One Judge (Charles A. Marvin) not involved in the opinion, agreed to a rehearing, but gave no reason, a pitiful show of either lack of interest, lack of energy, or lack of time (faults relating to the individual as well as to the system)!

A second Judge (Pike Hall) recused himself, but gave no reason, disadvantaging present Relator, in that a faulty rule regarding rehearings diminished Relator's odds in obtaining a rehearing, in that Relator had the possibility of only three out of four judges, as compared with three out of five prior to the judge recusing himself!

Finally, the third Judge (O.E. Price) who alone questioned the Opinion, although to whom I am grateful, must be included in my Complaints, because I fault both The Judges and The Law, both Man and Mechanics (Protocol). This Judge questioned one aspect of the problem only, and continued to fail, as had all others, to question *the specific law* at point, in all parameters relating to syntax, legislative intent, and custom — which had been raised!

There is great injustice based upon lack of time! Certainly any man, as a judge, who poses a question to the

rest of the Court, must be allowed, for the sake of Justice — to be answered! But, to take a vote that can refuse this jurist's question, destroys the system (and, also, propels the problem further into our Legal System, thus consuming even greater time and cost for Plaintiff — for Defendant — for Public!) Such a rule should be changed, to allow that any question would require answering.

These judges were asked specific questions, but refused to answer, which they had sworn to do! — They abuse discretion and show manifest error!

These judges refused, with the District Court Jurist, to detail syntax; then reversed the District Court Jurist, and refused to accept sworn testimony of a good citizen, excusing themselves on "precedent," — on "stare decisis" — and denied their minds any use of logic — a brutal act?! — a base act?! — an animal act?! — totalitarian?!

Who *confronts erroneous* precedent?

Who *challenges erroneous* precedent?

Who *corrects erroneous* precedent?

Some of the above judges cleverly (deliberately, yet *possibly* unbeknownst to each *consciously*) omitted mention of *original* "custom" in order to justify their own ideation — covert (concealed, hidden, veiled) cheating — unfair — against the rules of civilization — if we are to *pro*gress and not *re*gress!

These jurists, yet capable, have perpetrated an evil upon Society that *cries* for correction — that *must* be corrected — lest we dig in deeper and deeper — *backwards* — into the jungle, whence we came!

Et tu, Brute?

JUDGES, SUPREME COURT OF STATE OF LOUISIANA

Opinion given by Judge Watson, initialed by Judges
Jack Crozier Watson
John A. Dickson Jr.
Pascal F. Calogero Jr.
Walter F. Marcus Jr.
James L. Dennis
Gerald Federoff
Harry T. Lemmon

I charge each Judge who did *not* dissent with being guilty of abuse of discretion, manifest error, malpractice — tragically on a scale grander than the acts of District Court Judge and Appeal Court Judges, since at this Supreme Court level, these men not only are felt to be "better" judges than in the lower courts by the Public, but also had been exposed to each and every page of questions, answers, teachings, admonishings, cautionings, that I was able to deliver in the time, as well as to the Pleadings of my Counsels, who compete on the *highest* level of honor, intelligence, valor!

Of those Supreme Court Judges who initialed Judge Watson's Opinion, — if one or more of those gentlemen studied his Opinion, each should be found guilty of malfeasance! However, if one or more of those gentlemen admits to *not* studying in detail Judge Watson's Opinion, each should be found guilty of *non*feasance!

Specifically, I relate the following ideas:

I believe Defendant broke Subdivision Covenants in (a) not submitting pier-boathouse plan for Architectural Control Committee action; (b) constructing

outside of setback limits, i.e. too close to property line of neighbor, as specifically prevented by contract!

I believe City broke the law (Ordinance #40, 1964) in: (a) planning construction off perpendicular; and (b) allowing Defendant to utilize not only Defendant's servient estate, but mine (servient estate being that beach abutting property whose owner is granted "exclusive rights" contractually by the Ordinance!).

I believe Judge Watson finally concluded that the Law meant what is written — perpendicular to the Reservoir Boundry, i.e., the 172 ft. contour line — then, with the familiar wave of his regal hand, dismissed the 24° error in placement (90° - 66°) as being of no real consequence to all concerned ("de minimus")! (But consider if the pier had been constructed 24° off perpendicular in the opposite tack, thus obstructing Defendant's view and partially obstructing Defendant's ingress and egress to the Lake! — would this again be considered "de minimus" by Judge Watson?! — Naturally, I would have preferred the latter pier placement, thus giving me even greater use of my "exclusive rights" including view as well as ingress and egress! Yet, under the limitations of the *controlling* Ordinance, I feel that *the law must be applied*, so certainly feel it proper to "compromise" at 90°!

Study of my Counsels' Application for Rehearing to Supreme Court shows *many profound errors by Judge Watson*, which after admonitions to The District Court Judge, to the Appeal Court Judges, and finally to the Supreme Court Judges — such grave errors must be considered overt, willful abuses of discretion, manifest errors — conscious malfeasance, or nonfeasance — attempts that tend to destroy the reason for law — for social peace and goodwill! But The Law *must* be applied by the Judiciary — not the judges' own unique desires in each

case — rather, application of The Law, as each Judge interprets it, be this by obvious meaning, by syntactic analysis, or finally, by discovery of legislative intent (remembering also that *illegal* custom can *not* hold — The Law holds!)!

Under Assignment of Errors (pages 2-9):

1. Judge Watson failed to use constitutional law regarding VIEW in our Civil Code, but used laws that had been removed from said Code. This means that Judge Watson's thought processes were affected by unconstitutional ideas, but for some reason known by Judge Watson (certainly not by others), he preferred to break our extant laws by utilizing archaic — extinct laws! — WHY?!

   Is this Justice?!
   What happens to our fine system when such occurs, by a fully understanding Judiciary?!

2. Judge Watson repeated the above grave errors regarding my exclusive right of use of abutting beach! — WHY?!

   Is this JUSTICE?!
   What happens to our fine system when such occurs, by a fully understanding Judiciary?!

3. Judge Watson next is shown to ignore the subdivision covenants, a bonafide contract between developers and lot buyers, with the sanction of the local city government. WHY ?!

   Is this JUSTICE?!
   What happens to our fine system when such occurs, by a fully understanding Judiciary?!

4. Judge Watson refused to specify what rights said Ordinance grants (a) the city and (b) the private

property owner of abutting property — or else to declare said Ordinance void or null! WHY ?!

Is this JUSTICE?!
What happens to our fine system when such occurs, by a fully understanding Judiciary?!

5. As noted in first Rehearing Application by Counsels, note Judge Watson's refusal to apply law properly to extensions of buildings beyond property lines into Public domain when specifically provided for within said Public Ordinance and said building restrictions! WHY ?!

Is this JUSTICE?!
What happens to our fine system when such occurs, by a fully understanding Judiciary?!

6. (Note that Judge Calogero voiced true concern regarding equity for all area property owners during oral arguments). Note (page 4) Counsel's comment that Judge Watson's concern regarding Defendant's situation to be most noble and equitable, but that "the threshold question and issue to interpret exactly what is the right of exclusive use granted unto applicant—." "—that such problems are not solved by not applying applicable codal authority, as if such "does not appear in the Civil Code."

Note (page 6) Counsel's statement of the nobility of Judge Watson's desire to not tell Defendant his boathouse and pier obstructs, yet, — "— is in disregard of the clear codal authority."

I exclaim here that The Law is always equitable unless it is discovered to be otherwise, under varying circumstances. If The Judiciary feels that The Law does *not* show equity, it has *no* authority to change its intent, except under extremely

limited circumstances, such as to declare it unconstitutional, etc. (at which time The People, through The Legislature, will change The Law — if They so desire)!

The Judiciary is obligated by sworn oath to apply only *that* equity allowd by *The* Law — no more — no less! To do otherwise is considered unconscionable, abuse of discretion, manifest error — malfeasance or nonfeasance!

You see, the Individual who is subject to less objectivity and to more personal desire than is Society (as a *group* of individuals) — that Individual as Judge is *not* allowed to apply his personal opinion to a problem, but must apply a general statute to a specific problem, so that that *equity desired by The People* will function, yet always remains changeable by The People, through constitutional protocol!

Naturally, since my ox was gored, I have spent these efforts to help myself, but not at Society's expense — rather to help Society to continue to exist in peace and goodwill, governed by its LAW, composed by The People for All of The People — governed by its LAW that must not be perverted by judicial whim, but that must be revered by each Judge, who should complain to his Society if he feels a statute is lacking in equity, but, who should never refuse to apply that specific law to its specific problem when so asked by a Citizen!

This law was meant to be equitable for all private property owners abutting the lake. It has been shown that it functions in any instance it is applied, to allow construction for every owner of a pier — boathouse, of varying length and size, depending upon the relationships

of contour-line (water-line), length and angulation with close-by parcels of land. Thus, depending upon where on the lake someone buys property, such owner has access to the lake, of course some with greater ease, or greater value, within the sanctions of the Ordinance!

Buyer must understand his limitations for pier — boathouse construction under The Law. Then he may make his purchase. But to refuse to apply The Law, or to break The Law is unconscionable, and The People must not allow individual judges to abuse these constitutionally granted responsibilities and privileges!

SPECIFICATION OF ALLEGED ERRORS RELIED UPON

I. Lack of concern with relevant issues

A. Shreveport City Ordinance No. 40, 1964

1. Pier
   (a) Position
   (b) Length
2. Riparian Rights (guaranteed by both federal and state statutes)
   (a) Infrasurface
   (b) Surface
   (c) Suprasurface (including view)

B. Contracts

1. Shreveport City Ordinance No. 40, 1964
2. Subdivision contracts

II. Undue concern with irrelevant issues

A. Water depth (judge's insistence on allowing boathouses to be placed where there is inadequate depth for year-round boat docking without dredging boat channels, due to the shallow lake bottom in this entire area).

B. Relationships with other lake lots and placement of their pier beach units.

1. Each unit must conform to the City Ordinance's provisions in its own setting.
2. The law sets forth a general set of regulations, but it is to be applied as specifically as possible in each and every case, in each and every way.

C. City personnel action, if outside confines of the Ordinance.

D. Judicial opinion unconfined to the specifics of the law (City Ordinance No. 40, 1964).

III. Refusal to apply the law specifically to the present case.

IV. Deliberately ignoring legislative meaning — intent, and replacing it with a "judge-made law."

V. Refusal to study trial testimony, thus remembering few details, thereby presenting at times half-truths, and in error, molding ideas to suitably fit his prior opinion, while withholding potent trial testimony data that negate his own conclusions.

VI. Espousing the principle of stare decisis, while ignoring a bona fide city ordinance, as well as bona fide Louisiana case reports relating to view rights, riparian rights, and contract rights.

NO. 14,249

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

REHEARING REQUEST

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OPENING STATEMENTS OF REHEARING REQUEST

Honorable Judges
Court of Appeal
Second Circuit

Gentlemen:

Again I have approached the Bench, formally for the sixth time relating to the same problem (Trial on Injunction, Trial on Merits, Conference with District Judge in his Chambers, Partial New Trial, Trial on Appeal, and the present Rehearing Request)!

It has not been an easy road, yet not always rocky, and humor flows at times (as it should). This path has interested me profoundly — I am trained well to do one thing — to find fault! Granted that my training relates to "disease" as far as you might understand, it relates both to "disease" and to "dis-ease," that is, body changes structurally and substructurally — also emotional-mental change! And I have been quite well trained, and I am known to perform my job quite well, as judged by my physician peers. I have applied my energy to discovering the causes of the sickness ("disease *and* "dis-ease") in my present patient — this very case! And, after long, arduous study of the illnesses herein, I conclude all to be related to "dis-ease," — that is, related to emotional-mental problems!

My conclusions relate to discovery that the lawyers involved (for all three sides) lack adequate understanding of technical details of our language, but some refuse educational help, and, so far, are making a big, fat, "F"in this course! — And my conclusions relate to discovery that these citizens (representing a most vital profession for the existence of any culture), are emoting more, which is

suppressing the process of logical reasoning, thus producing illogical conclusions that are akin to the jabberwocky and the rhetoric of the Mad Tea-Party of Alice in Wonderland! (The latter expressions are used in order to emotionally express a conclusion based upon logical reasoning plus suppression of irrational emotion — yet some overflows at times! (Forgive me!)!

It is amazing to see judges:

> Accept intent and refuse to make a judgment for use! (District Court — Partial New Trial).
>
> Make a complete circle, arriving again at accepting present illegal custom, and refusing to accept originating custom, usually legally applied, at times illegally! Acceptance of original custom would destroy the judges' thesis! (Court of Appeal)!

This is paganistic logic — that is, rule by jungle law! — that verbalized ideas can be so subtle as to make us unknowing dupes of our unconscious, to greater and greater degrees, rather than to lesser!

Without malice, I challenge you to be *not* less than candid! You must remember *the means to the end (protocol) must not prevent justice!* You must remember those Canons of Judicial Ethics, particularly here-in noted as Number III:

"CONSTITUTIONAL OBLIGATIONS AND INFLUENCE OF DECISIONS UPON THE DEVELOPMENT OF THE LAW

"It is the duty of all justices and the judges of the Courts of Louisiana to support and defend the Constitution of the United States and the Constitution of Louisiana; in so doing, they should fearlessly observe and apply fundamental limitations and guarantees.

"A judge should be mindful that his duty is the application of general law to particular instances, and that he violates his duty as a minister of justice under such a system if he seeks to do what he may personally consider substantial justice in a particular case and disregards the general law as he knows it to be binding on him. Such action may become a precedent unsettling accepted principles and may have detrimental consequences beyond the immediate controversy. He should administer the office with a due regard to the integrity of the system of the law itself, remembering that he is not a depositary of arbitrary power, but a judge under the sanction of law." (R.S. 13:4431 — pg. 373)

You *men* are Trustees of The Law, and have obligated yourselves to maintain equity between those opponents confronting you regarding ethical application of The Law.

My conclusions, sadly — are those of a loving, though disciplining parent, who must control his love and hate properly in the rearing of his children, and, as, I hope, those of any good citizen. — Such conclusions are these:

Again, I must caution you, formally, that —

1. You persist in abuse of discretion!
2. You persist in manifest error!
3. These acts, obviously now on the conscious and knowledgeable level, unless corrected, are unconscionable, and amount to deliberate malpractice!
4. You can be removed from office if you openly abuse discretion — if you openly show manifest error, *in spite of prior cautioning!*

My request is possibly the last chance to express my thoughts on our problem, for this Court might refuse such

request for rehearing, and our Supreme Court might refuse the case!

So, I again beseech you Gentlemen to heed what is written herein — throughout the first, the second, and now, the third personal brief! you must remember not only instructions in *law*, but also — in ethics!

I shall forever be fatigued by this work, but shall continue as, I hope, an ethical person — a good citizen — with yet another and another moral problem presented (as can be found when dealing with the "dis-ease" of any patient). And in *my* being concerned with such as the Morality of Man, I caution *you* not to feel "intimidated" by my future action here, and *not* to apply such a term as "defamation" or as "blackmail"! You must understand that I shall carry my quest to not only the Supreme Court of Louisiana, if necessary, but to the Federal Courts, as well as to the organizations relating to Ethics of the Judiciary, both within the State and Nationally, as well as to the People, as I have already detailed to my counsels!

Some of us citizens simply must obligate ourselves to be observers, watch-dogs, if you will, of the Judiciary (as of all other actions of any person or group). Why? — The answer can come from innumerable sources, some outlined before — now, from the text *Partial Justice*, by Dr. Willard Gaylin, Professor of Psychiatry & Law at Columbia Law School, as noted below:

xvii Introduction

"What to my mind was the more important purpose here was to demonstrate how, in even the most fair-minded of individuals, their values, their lifestyles, their background, their current life experiences, in other words, their biases, are necessary and inevitable intrusions into the processes of discretion. I have attempted to demonstrate, most often

without comment, some of the factors, conscious and unconscious, rational and irrational, which go into decision making; to document the diversity of sentencing; to illuminate the patterns of reasoning of a few specific judges; and to suggest thereby the degree to which the sentence is determined not by the nature of the offender, or the offense, but by the nature of the sentencing judge. The latter becomes crucial, because the character and personality of the judge is an irrelevant and chance event. Arbitrary factors can seriously damage respect for the courts, and trust in their commitment to justice."

Pg. 5 "When serious criminals go unpunished, when minor offenses are excessively punished, when a chosen group receives lesser punishment or a despised group more punishment, it threatens all of us in that society, even the law-abiders. It corrodes the basic structural prop of equity that supports our sense of justice. An excessive disparity in sentencing threatens that kind of a breakdown.

"Laws are essentially established to maintain and preserve the social structure. In that sense at least, the purpose of law is order. But it is not merely law for order. The orderly society is not necessarily the most desirable. A concentration camp or a police state is usually more orderly than a democracy. Law must not only preserve the society; it must, in addition, serve its ideals and values. And in so doing, it must balance its desire for stability and order against its system of values. One overriding value to which almost every society will subscribe is justice. It is easier for all societies to claim to serve justice, than, for example, liberty, because justice is so difficult to define. Whatever the definition, an essential ingredient will be a sense of fairness and equity.

Page. 7 "It has always been assumed that a judge in his

values reflects those of the society he represents. The fact that the subgroup of the society he comes from is rarely the same as those he is judging is another question that requires examination. At any rate, it would be expected that where his personal values differ from those defined by law, he would, as a judge, serve the interests of the law over his personal interests — although the history of the civil right movement demonstrates there is no guarantee of this. He is expected to reflect the defined (whether objectively true or "right" is not important) values of his society. He is not, however, expected to reflect the prejudice and bias of that society. These are the emotional components of functioning, which fair men may recognize within themselves but which, out of fairness, they intellectually reject – – such rejection being enforced by law. A judge, like all of us, is expected to act above and beyond his prejudices; and while I respect the attempt of judges to overcome their bias, the expectation can, alas, be realized no more fully by them than by any other group."

Pg. 11 "The evidence is there, documented and overdocumented, and yet it is ignored. But what can we expect of the general citizenry when even the judges themselves seem unaware of their own performances?"

Pg. 14 "The purposes of this book are to demonstrate that judicial bias exists, and is operative in the sentencing procedure throughout the courts; to demonstrate how it operates by the inevitable intrusion of subjective values into that complex human process of decision making; and to demonstrate it in such a way as to disturb the complacency, offend the decency, and outrage the sense of fairness of that vast majority of people protected from contact with the courts, but whose support is essential in the struggle for justice."

Pg. 28 "But sentencing is done by judges, and judges are human beings with purposes of their own, equally vague, equally ill-defined, and not necessarily governed by the same motives, nor motivated by the same needs as the society. Man is a hero-hungry animal, and we want to believe that these shrouded figures are the detached descendants of Solomon. But they are not. The austere black robes, the elevated position, the exalted title, the formalized deference may extend and magnify the office without in any way enlarging the human being residing in that setting. As Justice Black reminds us: 'Like all the rest of mankind, they may be affected from time to time by pride and passion, by pettiness and bruised feelings, by improper understanding or by excessive zeal.' "

A judge is, even on the bench, a human being, and therefore subject to the same lack of controls and disciplines as are we all. If the conditions of his life outside the court can introduce factors that will influence his decisions, so can his exposure to the defendants in the court produce emotions which modify judgment. This can generate compassion, identification, sympathy, but also antagonisms. More often than not these can be buried and hidden from view but, buried or no, they will be reflected in his decisions on sentences. Consciously or unconsciously, the animosity that may develop during this period can find the satisfaction of retribution to a degree beyond what most of us are allowed in satisfying our personal hostilities. What is interesting is how many cases there are where even with the knowledge of this awesome power to strike his offender down, the judge simply cannot control his own passions."

Pg. 42 "Whatever pettiness, whatever malice, bigotry, fear, paranoia, resentment, vengefulness, and spite are generated in the hearts of men can be demonstrated in the

sentencing decisions of judges. It is not the purpose of this study merely to show that meanness in human character does not respect the boundaries of profession, title, or authority. To protect against the bias in the worst of us is of course essential. But to serve the purposes of equity, it is equally important to protect against the bias in the best of us. The paranoid bigot is a comfort. He permits us to seal off self-examination with a wall of self-righteousness. But it is imperative to admit the bias beyond bigotry; to recognize the individualized and personal values that intrude on the deliberations of any human being; to understand that there is no judgment of human behavior that is not subjective; and to appreciate that objective sentencing is a myth that will never be achieved even if it were capable of elevating to judgeship solely the purest in heart."

Pg. 82 "The greatest and most frequent injustice occurs at the discretion end of the scale, where rules and principles provide little or no guidance, where emotions of deciding officers may affect what they do, where political or other favoritism may influence decisions, and where the imperfections of human nature are often reflected in the choices made . . . The further we go toward the rules end of the scale (of justice), the greater the quantity of useful literature; the further we go toward the discretion end of the scale, the fewer the books and articles. Indeed I know of no systematic scholarly effort to penetrate discretionary justice. Writers about law and government characteristically recognize the role of discretion and explore all around the perimeter of it but seldom try to penetrate it."

Thank you,
Samuel L. Lieber

SAMUEL L. LIEBER

vs.

DURWARD RUST

SECOND CIRCUIT COURT OF APPEALS
CADDO PARISH

No. 14-249

OPENING REMARKS

Gentlemen:

Having heard only silence to my informal request for action at this Appeal Court level, you now receive my formal petition.

It is fascinating to read Judge Price's letter that you appeal Court Judges were unanimous in concluding that you had no further jurisdiction in my question — meaning that you were satisfied by a majority vote — as well as by the prior tie vote — except that in OUR SYSTEM, you can't do anything with a tie vote, except break it! Thus, again, based on my meager, but existing knowledge of philosophy, ethics, morals — I challenge you gentlemen to read again OUR LAW — and determine whether or not you have no jurisdiction — over your souls! For, that is what the essence is: — can we be *just* — enough to admit our own errors — and attempt to correct our own errors?!

Can you judges continue to allow *no* rehearing on a tie vote? If not, how can you justify your action in my case? Is there any ethical — moral means of breaking with the meaning — intent of a law, thereafter being cautioned, — and then continuing to allow the error?

Can my case be unique, so that I suffer — yet, those to come are to be treated with a different equity — certainly different from that which is a manifestation of the specific

LAW in question?!

How can this be in our system? —

Only if those responsible for judicial decisions are too fearful (whatever motive there be) to self-correct!

If I err — do not comprehend the meaning — intent of certain laws — then kindly correct my dumbness. Yet, if we cannot be questioned on each and every act of PUBLIC RESPONSIBILITY, we approach more and more closely that which we have escaped for over 200 years, TOTALITARIANISM!

Thank you,
Samuel L. Lieber, M.D.
Shreveport, La.
December, 1981

OPENING REMARKS
SUPREME COURT JUSTICES, LOUISIANA

Gentle Men:

As applied to the jurists on the Court of Appeal, I use the same term in addressing you jurists, inasmuch as Law is to be applied gently, yet firmly, in absence of violence!

Law can be defined as any written or positive rule or collection of rules prescribed under the authority of the State (through permission of its citizens in our case); the principles and regulations established by a government (of the people in our case) and applicable to a people, whether in the form of legislation or of custom and policies recognized and enforced by judicial decision.

Law is formulated by the legislative branch of government, and affirmed by the people, if they agree with its intent.

Interpretation of the law is the duty of the judiciary, the judge responsible to apply the obvious meaning of the law to the specific case. Where meaning does not seem obvious, more careful, diligent, persevering syntactic study of the law is necessary for determination of intent. If the law still confuses the jurist, our laws yet establish the mandate for the jurist to seek legislative intent.

> The jurist is obligated to examine with logic, and deduce from his meticulous study of the working of the law what is to be done in that particular circumstance. It is not the place of the jurist to alter the obvious meaning of a law, when syntax is applied properly, or if legislative intent is discovered; — the duty of the jurist is to apply the law in its specifics, then to expect the executive branch to so approach

the problem as to mete justice, according to that specific law!

Justice derives from just laws, which laws have been derived through the wisdom of men, for the good and not for the bad of the people. It must be based upon wise application of intelligent reasoning, obviously based upon what is known as logic, ethics, morality, as known in that particular culture!

The enclosed is a Brief In Person, unchanged from the Rehearing Request, made to the jurists on the Court of Appeals recently.

I feel that there is need for no change whatsoever in the enclosed, that it stands on its own! Although lacking in protocol (which is only valuable to ease the way to the end, though not necessarily always), the Brief contains what I consider to be vital information to be studied by the jurists on the Supreme Court!

Each jurist can most easily understand the problem presented by considering the final question in the District Court's Opinion, obviously asked of no one, since only the District Court could answer in its Opinion, yet did not! — although, perhaps the question could have been answered by the Appeal Court, but was not! — although said question was reiterated to the Appeal Court, and was even restated by said Court!

"To which side would the pier be placed perpendicular (to)?"

If you Justices study this problem logically, you will realize that there are three possible answers, namely:

1. Neither;
2. Either;
3. Both.

The answer to the question propounded by the District Court in its Opinion on the Partial New Trial relates to both answer No. 2 — Either, and answer No. 3 — Both, inasmuch as an individual can be allowed the placement of his pier on either line segment in this instance, or may be allowed two piers (if desired), one for each line segment in this instance.

> The law permits property owner to palce pier perpendicular to the 172 ft. contour line. Thus property owner may place pier to edge of property, as can the adjoining property owner, which piers may be paralleling one another, separated by only a few inches or feet (unless limited by set back by law). Also, where angles permit, the piers may begin close together at their land ends, yet extend away, one from the other, owing to an obtuse angle at the boundary point greater than 180 degrees. Finally, at an angle of less than 180 degrees, it is shown that piers can be allowed to extend towards one another, but never being allowed to overlap the line of bisection of the common angle, unless the adjoining property owner legally transfers his own riparian rights!

You Justices finally must understand (what no other jurist has so far) the *intent* of this law, not only having been maintained by its author, but also by study of syntax, and you will realize how, usually appropriately, and legally, it was applied in its early history, each time it was not broken!

A cause seems hopeless where the jurist:

1. Doesn't understand word definition (*length* of a pier; *perpendicular*);
2. Doesn't analyze syntactically;

3. Illogically commences his argument relating to statements of the *second* Superintendent of Cross Lake Patrol and the *second* Commissioner of Public Utilities, rather than beginning with the statements of the *first* Superintendent and the *first* Commissioner of Public Utilities, thereafter, proceeding to the statements of the *second*, if necessary.

4. Until such jurist learns (apparently few are willing), or if you jurists refuse to study the problem logically at his final State level, justice can not be meted!

Thank you,
Samuel L. Lieber, M.D.

SUPREME COURT
OF STATE OF LOUISIANA

DOCKET NUMBER 80-C-2514

SAMUEL L. LIEBER, *Relator* (Plaintiff-Appellant)
versus
DURWARD RUST, *Respondent* (Defendant-Appellee)

RELATOR'S BRIEF

WRIT OF REVIEW GRANTED TO THE COURT OF APPEAL, SECOND CIRCUIT, PARISH OF CADDO

RELATOR'S ORIGINAL BRIEF FILED ON BEHALF OF PLAINTIFF AND RELATOR, SAMUEL L. LIEBER, IN SUPPORT OF WRIT OF REVIEW GRANTED DECEMBER 5, 1980, IN COMPLIANCE WITH RULE VII, RULES OF THE SUPREME COURT OF LOUISIANA

KENNEDY, GOODMAN & DONOVAN
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Of Counsel

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RELLIS P. GODFREY

Attorneys for Plaintiff-Relator
Samuel L. Lieber

V.
CONCLUSION

The errors made by the Court of Appeal are not in any manner limited just to the instant proceeding before this Court. The errors are fundamental in interpretation and application of the applicable Louisiana Revised Civil Code of 1870 Articles as apply to the interpretation and extent of building restrictions. Either building restrictions are limited as the Court of Appeal so found to precisely and only the property contained within the physical boundary lines of a subdivision or they may extend into the use of the public domain when the use has in fact been granted to property owners and is a proper subject of the use building restrictions to this extent.

The Court of Appeal's error in the failure to define, interpret and apply the codal authority of "Rights of Use" as granted to relator in this proceeding is a fundamental error. The extent of such "Rights of Use" has yet to be interpreted by this Court.

The Court of Appeal's error in failing to properly recognize the historical definition and prior judicial interpretations given to the term of art "water line" transcends the ordinance itself and does violence to the established jurisprudence of the State of Louisiana.

The Court of Appeal's error in failing to properly apply the rules of construction in interpreting a municipal ordinance as set forth in the Revised Civil Code of 1870 is violative of these very articles and sets a new rule of interpretation not found within the jurisprudence of the State of Louisiana.

The Court of Appeal's error in holding that the building restrictions are inapplicable and Ordinance No. 40 of 1964 is too vague to be enforceable not only affects the

property rights of all parties to this proceeding but affects the property rights of all owners acquiring property subject to building restrictions and leaves all owners of property abutting Cross Lake with no enforceable criteria to the use of said water body and can only have the effect as set forth by Judge Price in his dissent: "The original opinion of this Court holds that a developer of lakeside property cannot impair restrictive covenants to control construction of piers and boathouses extending into the publicly owned waters adjacent to the subdivision. This ruling will adversely affect the orderly development of waterfront subdivisions and is not in the best interest of the public."

The errors made are fundamental to the rights and privileges granted unto property owners within the State of Louisiana and the scheme of interpretation to be made of municipal ordinances and laws of this state and must be corrected by this Court. Upon failure of correction then the City of Shreveport is faced with a situation of all property owners of property abutting Cross Lake having the absolute free rein and right to make whatever usage of the lake they desire and building restrictions clearly setting forth both use and building requirements therein being of absolutely no avail in the development of urban property.

VI.
REQUEST FOR ORAL ARGUMENT

Relator respectfully requests oral argument be granted in this proceeding in accordance with Rules 8 and 7, Rules of the Supreme Court of the State of Louisiana.

Respectfully submitted,
KENNEDY, GOODMAN,
& DONOVAN
1212 Mid South Towers
Shreveport, La. 71101

By: Frank S. Kennedy
and Rellis P. Godfrey

SUPREME COURT
OF STATE OF LOUISIANA

DOCKET NUMBER 80-C-2514

SAMUEL L. LIEBER, *Appellant-Applicant*
versus
DURWARD RUST, *Appellee-Respondent*

APPLICATION FOR REHEARING

OPINION AND JUDGMENT BY THE
SUPREME COURT OF THE STATE OF LOUISIANA
ON APRIL 17, 1981

APPLICANT'S BRIEF FILED ON BEHALF OF
PLAINTIFF-APPLICANT, SAMUEL L. LIEBER
IN COMPLIANCE WITH RULE IX OF THE
SUPREME COURT OF LOUISIANA

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Of Counsel

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Attorney's for Appellant-Applicant
Samuel L. Lieber

Number 80-C-2514

SUPREME COURT
STATE OF LOUISIANA

SAMUEL L. LIEBER
versus
DURWARD RUST

APPLICATION FOR REHEARING

TO THE HONORABLE JUSTICES OF
THE SUPREME COURT OF THE
STATE OF LOUISIANA:

The application of SAMUEL L. LIEBER, plaintiff and applicant in the cause entitled "Samuel L. Lieber versus Durward Rust," Number 80-C-2514, on the docket of this Court, applying for rehearing herein, respectfully represents:

1.

Applicant is aggrieved by the Opinion and Judgement of this Honorable Court rendered on April 17, 1981 and makes Application for Rehearing herein. Having conformed with the requirements of Rule IX of this Honorable Court and accordingly requests this Honorable Court grant a Rehearing herein.

2.

Applicant has attached hereto an Index of his Application and incorporates therein previous Index filed with applicant's original Application for Writ of Review in this proceeding.

I.
STATEMENT OF THE CASE

Applicant incorporates herewith his statement of the case more fully set forth in his Application for Writ of Review and Original Brief filed in support of same. Applicant notes that a building permit was issued by the City of Shreveport with construction begun by defendant in this proceeding on or about August 3, 1978, which was followed nine (9) days later by applicant's filing of his suit in the First Judicial District Court, Caddo Parish, Louisiana, on August 17, 1978.

Applicant further notes Act 103 of Acts 1976 effective January 1, 1977, enacted new Louisiana Revised Civil Code of 1870, Articles 639 through 645 with Act. No. 514, Acts 1977, effective January 1, 1978 revising and reenacting Louisiana Revised Civil Code of 1870, Articles 646 through Article 774 with Act No. 107, Acts 1977, effective January 1, 1978 enacting Articles 775 through Article 783 and Act No. 169 of Acts 1977, effective January 1, 1978, enacting Articles 784 through 796.

II.
ASSIGNMENT OF ERRORS

1. This Honorable Court's failure to apply the applicable codal authority in full force and effect when this proceeding arose on August 17, 1978 and citing as the authority for its determination, applicant is not entitled to a servitude of view, Louisiana Revised Civil Code of 1870, Articles 716, 727, 728, 765, 766 and 668 all prior to their 1977 amendment and all inapplicable to this proceeding with said action having arisen in 1978.

2. This Honorable Court's error in failing to interpret and construe the nature, extent and applicability of

Louisiana RevisedCivil Code of 1870, Articles 639 et seq establishing applicant's exclusive right of use.

3. This Honorable Court's error in failing to find as a matter of fact and law the construction made by defendant was a building and in violation of Section 6 of the building restrictions suit upon herein.

4. This Honorable Court's error in failing to affirmatively set forth the rights and responsibilities of applicant and the public under Shreveport Municipal Ordinance No. 40 of 1964 when said ordinance was declared to be too vague and ambiguous to be enforceable which was subsequently affirmed by this Honorable Court without any declaration as to its voidness or nullity.

III.
BRIEF ON FACTS AND LAW

1. This Honorable Court's failure to apply the applicable codal authority in full force and effect when this proceeding arose on August 17, 1978 and citing as the authority for its determination, applicant is not entitled to a servitude of view, Louisiana Revised Civil Code of 1870, Articles 716, 727, 728, 765, 766 and 668 all prior to their 1977 amendment and all inapplicable to this proceeding with said action having arisen in 1978.

The proceeding that was presented to this Honorable Court arose with applicant's filing of his suit on August 17, 1978, approximately nine (9) days subsequent to defendant having acquired a permit from the City of Shreveport and construction initiated on his boat house and pier. Accordingly, the law to be applied is that as in full force and effect on August 17, 1978 and no other law. In support of this Honorable Court's determination that applicant is not entitled to a servitude of view, the Court

cited as the authority supporting same Louisiana Revised Civil Code of 1870, Articles 716, 727, 728, 765, 766 and 688, all prior to their 1977 amendment. Said articles are inapplicable to this proceeding. Said amended articles are applicable and were in fact cited by applicant to be read in pari materia with Louisiana Revised Civil Code of 1870, Articles 639 et seq.

This Honorable Court set forth that applicant contended that Ordinance No. 40 of 1964 created the predial servitude of view and cited Civil Code Article 716 prior to its 1977 amendment as being the article applicant claimed such a servitude of view was thereby created. This Honorable Court was in error in that applicant has contended and still contends that the ordinance by its very own terminology granted unto him the exclusive right of use of Cross Lake which abutted his property and lies between the 172 foot contour line and the actual water level of Cross Lake. Applicant further contended and contends that it is only through the proper interpretation and construction of the entire authority cited that his rights to his area of exclusive use to include that of the de minimis right of unobstructed view was granted to him.

The citation by this Honorable Court as authority for its determination that applicant is not entitled to a servitude view of Article 727, 728 and 765 prior to their 1977 amendment is equally as incorrect. Article 727 and 728 were not amended but were in fact repealed by the 1977 amendment with Article 765 being reenacted as portions of Articles 740 and 742. The citation by this Honorable Court of Article 668 prior to its 1977 revision in support of this Honorable Court's pronouncement that applicant is not entitled to an entirely unobstructed view of the lake is incorrect in applying the codal authority prior to its 1977 revision and is found within Title IV, Book 2, Chapter 3,

Section 1, concerning legal servitudes. The servitude in question in this proceeding is one that was conferred upon applicant by the City of Shreveport and as so defined in Louisiana Revised Civil Code of 1870, Article 639 et. seq.

Applicant perceives that this Honorable Court does indeed feel that he is entitled to a servitude of view but that this Court does not desire to declare that the defendant's pier in fact obstructs said view. Applicant also perceives that this Honorable Court does not desire to declare that applicant in law has a right of unobstructed view because of defendant's complying with the then City of Shreveport's policy pursuant to the construction of boat houses and piers. Such concerns by this Honorable Court are most noble and equitable. However, this Honorable Court had before it the threshold question and issue to interpret exactly what is the right of exclusive use granted unto applicant as fully set forth in Civil Code Article 639 et. seq. which were in fact and law the applicable codal authority. The Opinion by this Honorable Court simply disregards this Authority as though it does not appear in the Civil Code.

2. This Honorable Court's error in failing to interpret and construe the nature, extent and applicability of Louisiana Revised Civil Code of 1870, Articles 639 et. seq. establishing applicant's exclusive right of use.

This Honorable Court erred in failing to apply Louisiana Revised Civil Code of 1870, Articles 639 et. seq. to determine the nature, extent and applicability of the exclusive right of use area granted by Municipal Ordinance No. 40 of 1964 unto applicant. Article 639 defines "the personal servitude of right ot use (as) confer(ing) in favor of a person a specified use of an estate less in full enjoyment" with Article 640 establishing "the right of use

may confer only an advantage that may be established by predial servitude" with Article 642 setting forth the extent of said right of exclusive use as "a right of use includes the rights contemplated or necessary to enjoyment at the time of its creation *as well as rights that may later become necessary, provided that a greater burden is not imposed on the property unless otherwise stipulated in the title,*" with Article 643 setting forth the transferability of such a right by stating "the right of use is transferable unless prohibited by law or contract," with the regulation and interpretation of said rights being that as set forth in Articles 645 as being "a right of use as regulated of the rules governing usufruct and predial servitudes to the extent that their application is compatible with the rules governing a right of use of servitude." This is the authority that this Honorable Court has failed to apply and is further delineated by Professor A. N. Yiannopoulos, III Yiannopoulos, Louisiana Civil Law Treaties, Personal Servitudes, Sections 123 and 124 (1968) as "They constitute an intermediate category between personal and predial servitudes. Like usufruct, use and habitation, they are charged on property in favor of a person rather than estate; like predial servitudes, they are necessarily charges on an immovable belonging to another person and are confined to certain advantages of use or enjoyment. Limited personal servitudes may exist in favor of both natural and geritical persons. In all cases, they are governed by analogous application of the rules government predial servitudes . . . but as all other personal servitudes, limited personal servitudes also terminate at the death of the beneficiary in whose favor they are established. Since there is no dominate estate *the extent of the utility to be derived from the servitude is determined, in the absence of contrary disposition and the title creating the servitude, according to the personal wants of the beneficiary*

and those of his family. This is a rule of interpretation."

This is the exact same authority set forth in Expose des Motifs appearing as the preface to Title III of Book 2, Personal Servitudes, of this section of the Civil Code, Volume 3, West Louisiana Civil Code Annotated, page 407. It cannot be disregarded by the Court.

Louisiana Revised Civil Code of 1870, Articles 697 establishes that "predial servitudes may be established for an owner on his estate or acquired for its benefit. The use and extent of such servitudes are regulated by the title for which they are created, and, in absence of such regulation, by the following rules" with the personal servitude of exclusive right of use thusly created by Ordinance No. 40 of 1964 analogous to such a predial servitude with Article 699 setting forth the differing types of predial servitudes, one of which is "those of view" with Article 701 defining such as being "the servitude of view of the right by which the owner of the dominant estate enjoys a view. *This includes the right to prevent the raising of constructions on the servient estate that would obstruct the view*" (Emphasis added). Accordingly this Honorable Court is in error in failing to properly define, interpret, construe and pronounce to applicant and all similar owners of property adjoining Cross Lake what their areas of exclusive use in law are and the rights associated therewith. This Honorable Court's desire to not tell defendant his boat house and pier obstructs applicant's rights of view, noble as it may be, is in disregard of the clear codal authority.

This Honorable Court has cited Article 668 as unamended by the 1977 revision thereto as being authority for the position that "plaintiff is not entitled to an entirely unobstructed view of the lake." Said citation of this article

for this proposition is erroneous for Act 514, Acts 1977, clearly enacted Article 701 which sets forth that "That for the servitude of view is the right by which the owner of the dominant estate enjoys a view; this includes the right to prevent the raising of constructions on the servient estate that would obstruct the view." This is the authority that was in fact and law to be consulted effective January 1, 1978 when applicant filed his suit on August 18, 1978, eight (8) months subsequent to said effective date of said act.

3. This Honorable Court's error in failing to find the matter of fact and law the construction made by defendant was a building and in violation of section 6 of the building restrictions suit upon herein.

This error was specified as Error No. 6 in applicant's Application to this Honorable Court and his brief to this Honorable Court. This same issue and question was in no manner reviewed by this Honorable Court.

That the defendant's boathouse and pier did in fact infringe upon the set back area within the building restrictions is unmistakable from review of the evidence presented at trial of this proceeding. The very permit introduced into evidence by defendant and plats introduced into evidence by applicant show the total width of defendant's lot if 164.10 feet for which Section 6 of the building restrictions involved in this matter require no building be located nearer to the side lot than 10% of the lot at the building line set back. The evidence further clearly showed that the distance of defendant's pier from the east common boundary line was 10 feet and not 16.41 feet for a difference of 6.41 feet constituting an infringement of applicant's rights and violation of the building restrictions. It was for this very reason that said section of

the building restrictions subject to which defendant purchased his property were imposed, to prevent the building of any construction too close to the side lot boundary lines. This is exactly what has transpired and exactly what this Honorable Court has failed to consider.

4. This Honorable Court's error in failing to affirmatively set forth the rights and responsibilities of applicant and the public under Shreveport Municipal Ordinance No. 40 of 1964 when said ordinance was in fact declared to be too vague and ambiguous to be enforceable which was subsequently affirmed by this Honorable Court without any declaration as to it voidness or nullity.

This Honorable Court erred in failing to affirmatively declare and set forth what are the rights of property owners around Cross Lake when the Trial Court has found Shreveport Municipal Ordinance No. 40 of 1964 to be too vague and ambiguous to be applied which has subsequently been affirmed by this Court. The Opinion and Judgment of this Court thusly affirms the Trial Court's ruling, affirmed by the intervening Appellate Court, and leaves not only applicant but all similar owners at a loss to know whether or not the ordinance is in fact struck with voidness or annullity. Equally the City of Shreveport is placed in the position of having had the Trial Court declare and this Honorable Court so affirm without specifically addressing itself to the issue, a city ordinance as being too vague and ambiguous to be enforceable without any declaration that it is de' jure struck down. Either the Trial Court's determination is correct and accordingly the ordinance must be declared null and void or the Trial Court's determination is incorrect and the ordinance is enforceable. As it stands now, no one knows when in fact this issue was squarely presented to the Honorable Court.

Applicant's position throughout this proceeding has been that the ordinance is neither vague nor ambiguous but is enforceable. Applicant perceives this to be the position of this Court for as set forth in this Honorable Court's Opinion and Judgment herein it found the City of Shreveport's actions in granting defendant the right to build his pier where he did not to have been arbitrary or capricious. The arbitrary or capriciousness of the City's actions has never been argued by applicant but rather whether or not the ordinance is in fact enforceable. If in fact and law the ordinance was not enforceable, then the actions by the City of Shreveport are of no moment whether they were arbitrary and capricious or not. Applicant has additionally contended throughout this proceeding that the interpretation and application of the ordinance varies from administration to administration with the most recent application as testified to by Commissioner Billy Guin being one to achieve equity. Applicant does not quarrel with the intentions of former Commissioner Guin, but again reiterates he is entitled to know as well as all other owners of property abutting Cross Lake what their exact rights are under said ordinance. Either the ordinance is too vague and ambiguous to be enforceable or it is in fact neither vague nor ambiguous and is enforceable. This is a question and issue this Honorable Court has failed to address itself to.

IV.
CONCLUSION

Applicant reiterates the statement made by the Honorable Chief Justice at presentation of oral argument in this proceeding that this case presented serious questions to the Court. Of that there is no doubt. Applicant respectfully avers and believes that these questions have not been

addressed by this Honorable Court and answered. That they persist and will persist cannot be overlooked by this Honorable Court. The parties to this proceeding in their respective roles represent all property owners of abutting property to Cross Lake. Applicant seeks a Rehearing to be granted herein concerning the very serious questions and issues presented. The threshold question of whether or not applicant and all other owners of abutting property unto Cross Lake have an area of exclusive use as so conferred by Shreveport Municipal Ordnance No. 40 of 1964 remains unanswered. If so, what is in fact and law the nature, extent and applicability of same to specifically include the right to an unobstructed servitude of view as set forth in Revised Civil Code of 1870, Articles 639, et. seq. and specifically Article 701, all as amended by Acts 1976 and 1977 and being the applicable jurisprudence in this case? Inherent in such determination is whether or not the very municipal ordinance granting said right of exclusive use is too vague or ambiguous to be applied and accordingly must be struck down or is neither vague nor ambiguous but is enforceable. If it is enforceable, then applicant does have the right granted by said ordinance which is enforceable.

Applicant is additionally entitled to have this Honorable Court fully address itself to the question of Section 6 of Article 2 of the building restrictions at issue. Either the building restrictions are enforceable pursuant to which defendant bought his property with said Section clearly setting forth a setback provision which has been violated by defendant, or not enforceable. This very setback provision was a provision placed in said building restrictions in an attempt to prevent what has in fact transpired in this proceeding.

Respectfully submitted,

KENNEDY, GOODMAN &
DONOVAN
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Shreveport, Louisiana 71101

By: Frank S. Kennedy
and Rellis P. Godfrey
Attorneys for Applicant
Samuel L. Lieber

CERTIFICATE

I hereby certify that a copy of the above and foregoing Brief in Support of Rehearing has this day been placed in the United States Mail with sufficient postage affixed thereto unto Mr. Joseph L. Hargrove, Jr., Esquire, and Mr. Joseph L. Shea, Jr., Esquire, Hargrove, Guyton, Ramey & Barlow, Attorneys at Law, 1100 Mid South Towers, P.O. Drawer B., Shreveport, Louisiana 71161, this 27th day of April, 1981.

Rellis P. Godfrey

STATE OF LOUISIANA
PARISH OF CADDO . . .

BEFORE ME, the undersigned authority, a Notary Public in and for said Parish and State, duly commissioned, qualified and sworn, personally came and appeared RALPH W. PARNELL, JR., who, after being duly sworn, did depose and state:

That he has mailed, on this 24th day of April, 1982, postage prepaid, a copy of the foregoing Petition of Extraordinary Writs of Prohibition, Mandamus, or Both in the Alternative to each of the following:

Justice John A. Dixon, Jr.
Supreme Court of Louisiana
301 Loyola Avenue
New Orleans, Louisiana 70112

Justice Jack Crozier Watson
Supreme Court of Louisiana
301 Loyola Avenue
New Orleans, Louisiana 70112

Justice Pascal F. Calogero, Jr.
Supreme Court of Louisiana
301 Loyola Avenue
New Orleans, Louisiana 70112

Justice Walter F. Marcus, Jr.
Supreme Court of Louisiana
301 Loyola Avenue
New Orleans, Louisiana 70112

Justice James F. Dennis
Supreme Court of Louisiana
301 Loyola Avenue
New Orleans, Louisiana 70112

Justice Gerald Federoff
Supreme Court of Louisiana
301 Loyola Avenue
New Orleans, Louisiana 70112

Justice Harry T. Lemmon
Supreme Court of Louisiana
301 Loyola Avenue
New Orleans, Louisiana 70112

Judge Jasper E. Jones
Second Circuit Court of Appeals
Caddo Parish Courthouse
Shreveport, Louisiana 71101

Judge Charles A. Marvin
Second Circuit Court of Appeals
Caddo Parish Courthouse
Shreveport, Louisiana 71101

Judge Fred W. Jones, Jr.
Second Circuit Court of Appeals
Caddo Parish Courthouse
Shreveport, Louisiana 71101

Judge Pike Hall
Second Circuit Court of Appeals
Caddo Parish Courthouse
Shreveport, Louisiana 71101

Judge O. E. Price
Second Circuit Court of Appeals
Caddo Parish Courthouse
Shreveport, Louisiana 71101

Judge Cornelius J. Bolin
First Judicial District Court
Caddo Parish, Louisiana 71101

Mr. Durward R. Rust (Defendant)
5613 Lakeshore Drive
Shreveport, Louisiana 71107

Mr. Joseph L. Hargrove, Jr.
Hargrove, Guyton, Ramey & Barlow
1100 Mid South Towers
Shreveport, Louisiana 71101
(Attorneys for Defendant)

That the above mailing took place within the time permitted.

S/Ralph W. Parnell, Jr.
RALPH W. PARNELL, JR.
Attorney for Petitioner

SWORN TO AND SUBSCRIBED before me, Notary, this 24th day of April, 1982.

S/Frank S. Kennedy
Frank S. Kennedy, Notary Public
in and for Caddo Parish, Louisiana

The undersigned, RALPH W. PARNELL, JR., hereby certifies that a copy of this filing was mailed to the parties named in the above and foregoing affidavit.

S/Ralph W. Parnell, Jr.
RALPH W. PARNELL, JR.

SWORN TO AND SUBSCRIBED before me, Notary, this 28th day of May, 1982. S/Frank S. Kennedy
Frank S. Kennedy, Notary Public in and
for Caddo Parish, Louisiana